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DE OFFICIO HOMINIS ET CIVIS JUXTA LEGEM NATURALEM LIBRI DUO

BY SAMUEL VON PUFENDORF

VOL. I. A Photographic Reproduction of the Edition of 1682, with an Introduction by Walther Schücking and a List of Errata.

VOL. II. A Translation of the Text, by Frank Gardner Moore, with a Translation (by Herbert F. Wright) of the Introduction by Walther Schücking, and an Index by Herbert F. Wright.

This volume with Vol. I constitutes No. 10 of "The Classics of International Law." A list of the numbers already published is given at the end of this volume.

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BY

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VOLUME TWO

THE TRANSLATION

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CONTENTS

VOLUME I

VOLUME II

INTRODUCTION

By WALTHER SCHÜCKING

TRANSLATION BY HERBERT F. WRIGHT

INTRODUCTION

In the history of international law two tendencies have struggled with one another for centuries and if it occasionally appeared as if one or the other were vanquished and stricken to the ground, it was not very long before it gave forth again powerful signs of life.[1] The one dominating during the nineteenth century in general is the *positivistic*.[2] It takes as its sole point of departure the law created by custom and conventions, consequently objectively produced. Its dangers lie in the fact that it often neglects to elaborate leading principles from the fullness of legal material available in international life, but still more in the denial of critical judgment in relation to the existing legal conditions and institutions.

When new circumstances arise, the world employs new norms. It is the task of scholarship in this case to bear in advance the torch for the development of law. But whence does the scholar receive the light wherewith to enkindle this torch, if he occupies himself only with the material of positive law, which perhaps long since has ceased to be the "just law" which the nations need? In such circumstances particularly the other tendency of the science of international law, that of the natural law, regains increased meaning. It seeks to develop the law philosophically out of the idea of justice and the necessities of the nations. For centuries, in regard to the legal principles developed by it, it has laid claim to immediate validity.[3]

Both tendencies of international law go back to their old master, Hugo Grotius. Not without reason is one accustomed to designate Grotius as the father of natural law, though one ought not overlook the rôle which has already been played with regard to this idea by the

[1] Cf. A. RIVIER, *Literarhistorische Uebersicht der Systeme und Theorien des Völkerrechts seit Grotius*, in FRANZ VON HOLTZENDORFF, *Handbuch des Volkerrechts*, vol. i (Berlin, 1885), pp. 393–523. The same work forms the fourth part in HOLTZENDORFF-RIVIER, *Introduction au Droit des Gens*, which appeared in French (Hambourg, 1888–1889).

[2] Certainly the natural law "outsiders" are not among the worst representatives of the entire group. Only three of them need be mentioned here from the century in question. Professor JAMES LORIMER of Edinburgh, for example, says, in his *The Institutes of the Law of Nations* (1883–1884, also published in French translation by ERNEST NYS in 1884), vol. i, p. 19: "The law of nations is the law of nature, realised in the relations of separate political communities." J. K. BLUNTSCHLI, in his famous work, *Das moderne Völkerrecht der civilisirten Staaten als Rechtsbuch dargestellt* (Nördlingen, 1868), by no means gives merely positive law, and the Frenchman BONFILS in his oft-printed manual under No. 40 treats the natural law of nations as valid law.

[3] Cf. especially the comprehensive work of ERICH CASSIRER, *Naturrecht und Völkerrecht im Lichte der Geschichte und der systematischen Philosophie* (Berlin, 1919).

Church fathers and the theologians and jurists of the Middle Ages, since the Catholic Church can even today lay claim to the merit of having retained the idea of natural law through a purely positivistic and in many ways materialistic age up to the immediate present.[4] The foundation of the science of natural law, which Hogo Grotius gives in the Prolegomena to his *De jure belli ac pacis*, forms also the foundation of his system of international law and, in a way which is charmingly naïve to us today, he seeks to demonstrate the *consensus gentium*, instead of from the practice of States, frequently from the pronouncements of philosophers, historians, poets and thinkers. At any rate, he is the representative of a dualistic view, he does not fail to recognize the existence of a positive law of nations which in his time was prevailingly based on customary law and for this [law of nations] he coins the idea of the *jus gentium voluntarium*. What indeed may be the comparative value of the two branches of the theory of international law created by him, he concedes to positive law only the meaning of an argument corroboratory of the intrinsic correctness of the natural law.

While the Englishman Zouche (1590–1660),[5] endowed with the practicalness of his nation, takes over from Grotius, it is true, the dualism between a natural and a positive law of nations, but very resolutely gives precedence to the latter, Thomas Hobbes indeed acknowledges no law of nations apart from natural law. Natural law is to him "vel naturale hominum, quod solum obtinuit dici lex naturae, vel naturale civitatum, quod dici potest lex gentium, vulgo autem jus gentium appellatur: praecepta utriusque eadem sunt."[6] While Hobbes indeed permits the law of nations to be completely absorbed by the natural law, he opens up a line of development of which the standard-bearer is Pufendorf, the author of three works treating of international law, one of which only shall occupy our attention.

1. *The Author and the Origin of the Work*

The work of Samuel von Pufendorf, *De officio hominis et civis prout ipsi praescribuntur lege naturali*, was published for the first time in the year 1673 at Lund in Sweden. The author was in a certain sense representative of the international type of scholar, such as formerly was produced by the common use of Latin in the universities and as we

[4] Cf. hereon the work of the German Jesuit, VICTOR CATHREIN, *Recht, Naturrecht und positives Recht* (2d ed., Freiburg, 1909).

[5] ZOUCHE, *Juris et judicii fecialis, sive juris inter gentes, et quaestionum de eodem explicatio, qua, quae ad pacem et bellum inter diversos principes aut populos spectant, ex praecipuis historico-jureperitis exhibentur* (Oxford, 1650), republished with English translation in the Classics of International Law (Washington, 1911).

[6] HOBBES, *Elementa philosophica de cive* (Paris, 1642), "Imperium", c. xiv, § 4.

must now endeavor to produce for the benefit of the science of international law by the more difficult path of polyglottism of the individual. For as the famous Italian, Alberico Gentili, had closed his days as professor at Oxford, as Francisco Suarez taught now in Italy, now in Spain, to mention only these two most famous predecessors of Grotius, so also Pufendorf belonged to the number of those cast by fate hither and thither.

Born in 1632 in the village of Flöhe near Chemnitz in Saxony, and active as a young man as a tutor in the home of the Swedish ambassador in Copenhagen, at 28 he had made such a name for himself by his *Elementa jurisprudentiae universalis*, which was published in 1660 at The Hague, that there was established for him in 1661 in the philosophical faculty of the University of Heidelberg, a chair of the law of nature and of nations, which he nine years later exchanged for the position of a *professor primarius* of law in the University at Lund founded by the Swedish king, Charles Gustavus. Established therefore in Sweden since 1670, he had not completed his days as professor at Lund before he soon took upon himself still other tasks.

As a matter of fact, he shared with his great predecessor, Grotius, versatility of genius. Though he, a clergyman's son, first passed over to jurisprudence from theology, he did not therefore restrict himself to juristic interests, but was also a far-sighted student of political science. We need only recall in this respect his famous work, which he had produced in 1664 under the title, *Severinus de Monzambano: De statu Imperii Germanici ad Laelium fratrem, dominum Trezolani, liber unus.* Under the mask of a Veronese nobleman he here not only pronounces an annihilating criticism of the condition of public law in the Holy Roman Empire of the German nation, but also points the way to its regeneration which he discovers in the establishment of an army at the general expense, the secularization of the ecclesiastical principalities, the abolition of the cloister and the expulsion of the Jesuits. His reputation as a political scientist led in 1677 to his transference as state historiographer to Stockholm, from which place he was called in 1686 to Berlin by the Great Elector, to write the history of the rising Brandenburg state. For the characterizing of his personality and of his works in the sphere of pure jurisprudence these dates are no immaterial factors, since we see here an interesting contrast to the most prominent law professors of the most recent past, who have often only temporarily deserted the boundaries of their native state and have often considered occupation with problems of politics as scientific falling from grace.

The work, *De officio hominis et civis prout ipsi praescribunter lege*

naturali, of 1673 had been preceded in 1672 by the great work, *De jure naturae et gentium libri octo*, which appeared in 1674 in a considerably enlarged edition. Both books had a great popularity and linked the name of Pufendorf enduringly with the science of international law; to their propagation the French translation by Barbeyrac (1674–1744, member of the Berlin Academy, Professor in Lausanne and Groningen) had contributed much.[7]

2. *The Preface of the Work*

The preface of the book contains important considerations which are not even contained in Pufendorf's large work *De jure naturae et gentium*. After the author had first referred to the technical purpose for which he published this compendium for the benefit of students, he distinguishes three sciences: The *natural law* common to all men, deriving its origin from reason alone; the *civil law*, which is valid only in the individual state; and *moral theology*, the dictates of which God has given to Christians in the Holy Scripture. The greatest difference between natural law and moral theology consists in the fact that natural law, rooted only in this life, will make man only for this life into a worthy member of human society, while moral theology trains the citizen of the heavenly city, who considers himself here on earth only as a sojourner or stranger. Therefore the precepts of natural law are directed to the external conduct of man, those of moral theology to the heart. Natural law has to do with man, as he actually is, since the fall; an animal subject, with a great number of evil impulses. A natural law for man in the state of innocence would have had another content. Natural law need not have commanded aid for the poor, assistance of the unfortunate, care for widows and orphans, pardon for wrongs, maintenance of peace, had there not been necessity and death, enmity and discord since the fall from grace.

3. *The Structure of the Work*

The examination by Pufendorf of the duties of a man and citizen is divided into two books. The author follows a system the standard of

[7] BARBEYRAC based his translation of the work *De officio hominis et civis*, dated in the preface at Berlin, March 1, 1707, upon the eleventh edition of the original, which was prepared in 1705 at Frankfort-am-Main by Professor IMMANUEL WEBER of Giessen. The fifth edition of this translation was dated in the preface by the translator himself at Groningen on August 25, 1734. A further edition appeared in 1756 at Amsterdam and Leipzig after the translator's death. The complete title runs: *Les devoirs de l'homme et du citoyen, tels qu'ils sont prescrits par la loi naturelle, traduits du latin du Baron de Pufendorff, par Jean Barbeyrac. Nouvelle edition.*

From a later date should also be mentioned a rather large edition in Latin, which appeared at Leyden in 1769 in two volumes totaling 1043 pages. It bears the title: *S. Pufendorfii de officio hominis et civis secundum legem naturalem libri duo, cum observationibus Ev. Ottonis et Gottl. Gerh. Titii; cum supplementis et observationibus Gerschomi Carmichaelis, et annotationibus Gottl. Sam. Treneri.*

which has been made in an interesting way the basis of the universal common law, the Code of Frederick the Great of 1794. The first book is devoted to the duties of the particular individual, the second rises from the individual to the larger spheres of life and considers the duties, which arise from membership in this community relationship, beginning with marriage, through the state to the association of states. Doubtless an ingenuous idea for the structure of a legal order exhausting all the relations of life. Through the whole there extends as the fundamental idea the ideal of social man, whose conduct is determined by the fact that man is not alone in the world and that his conduct must be conditioned by the necessities of community life.

a) Book I. In Chapters I and II the author speaks of human actions in general, their principles and their accountability, of the necessity of these actions to be subject to a rule, from which law arises, and of the righteousness and unrighteousness of a mode of action. In this connection the author distinguishes divine and human law according to the immediate authorship. All human law in his opinion is regularly positive, whether it be a natural law which undeniably is derived from the rational and social nature of man, so that without its consideration an honorable and peaceful society of men would be impossible, or only as positive law in a narrower sense of the word, rest upon the decision of a concrete lawgiver (cf. Chapter II, § 16).

The following Chapter III deals with natural law in general. The rules of conduct which must be followed to be a fit and useful member of human society are the *leges naturales*. The *lex fundamentalis* of natural law is the duty of every man, so far as in him lies, to strive that the welfare of human society in general be secured and maintained (§ 9). *Universal sociability* is the norm; all the other laws are merely corollaries. Reason is sufficient to discover these in our hearts.

The duties which result therefrom can be divided into the duties of man toward God (Chapter IV), toward himself (Chapter V), and toward other men (Chapter VI). The first absolute duty of an individual toward others is to do injury to no man and, where this might have happened, to make good the damage. The second duty in the relations of the individual to others, dealt with in Chapter VII, is the obligation to consider all others as by nature entitled to the same rights. The third general duty of the individual to his fellow-men is to promote as far as possible the advantage of others. This is treated in Chapter VIII of the book. Here the idealism of the author rises to particular heights. The dictum of Goethe: "What thou hast from thy father inherited, earn it, in order to possess it," or Article 153, paragraph 3, of

the new German Constitution of Weimar: "Property imposes obligations. Its use by its owner shall at the same time serve the public good," is here indeed anticipated.

After the exposition of these *absolute* duties of the individual to his equals, the author, in the following nine chapters (Chapters IX–XVII, inclusive), proceeds to the *conditional* duties. These arise from engagements or agreements (Chapter IX), from the mere use of language (Chapter X), of oaths (Chapter XI), of acquisition of ownership (Chapter XII), and of bona fide ownerships (Chapter XIII); they relate to the price for an article or service (Chapter XIV), to contracts (Chapter XV), to the dissolution of obligations to which agreement has been made (Chapter XVI), and to the method of interpretation of agreements and laws (Chapter XVII). All these things, however, as stated, are treated only from the standpoint of the individual in his relation to other individuals or rather to society; of the state or even of the association of states we hear nothing.

b) Book II. In the second book of the work, as said above, the author no longer concerns himself solely with the particular individual, but with the larger spheres of life in which the individual is placed. In the first chapter, in open dependence upon Hobbes, he premises a reflection upon the *status naturalis*, wherein there was only a dependence upon God and society had not yet been constituted into a state, there is no true peace but at every instant everyone must be prepared for battle, conflicting parties may select arbiters for themselves indeed, but eventually everyone is still compelled in default of a public authority to maintain his own right himself. The first beginning in the formation of a civil society is marriage (Chapter II).

Chapter III deals with the remaining family law, so far as there is question of the mutual relations between parents and children; Chapter IV of the mutual obligations between a master and his servants and slaves. To those who know that, according to the Bavarian marriage law [8] up to the year 1900 "moderate chastisements" were permitted to the husband even against his wife, it is not surprising that in this work of 1673 a similar right is conceded to the master against his servants. Of particular interest here, however, are the details concerning the treatment of slaves, as far as they pertain to international law. Pufendorf is still far from acknowledging Rousseau's "To be a man is to be free." Slavery, strangely enough, to this thinker of natural law, still passes as a natural institution, which he dares not impugn. And indeed he concludes therefrom that slaves can be made according to the law of war,[9]

[8] The *Codex Maximilianeus Bavaricus* of 1756 was authoritative in Bavaria.

[9] A conclusion to which indeed Hugo Grotius also adhered. Cf. Book III, ch. vii and xiv.

although the slave must be treated with consideration after the conclusion of the state of war, that is, one must give him what he needs for living and should not mistreat him without reason. Also bought slaves should be treated humanely.

It is only with the following Chapter V of the second book that we set foot upon the soil of *public law* proper. Pufendorf investigates the question why men have united together into large social groups of states. In keeping with Hobbes he denies the celebrated teaching of Aristotle of man as a ζῶον πολιτικόν (political being). He derives the foundation of the state rather from the fact that man loves himself and his own interests the most. Outside of social ties man is an *animal longe miserrimum;* in the political tie he finds according to his own perception the greatest possibility of satisfying his necessities and his desires. For proof Pufendorf, in his description of the natural state of man, gives a paraphrase of the famous phrase of his great predecessor, Hobbes, *homo homini lupus.* By nature, he thinks, no animal is fiercer and more untamed than man, none is prone to more vices which tend to menace others. For outside of his instinct of hunger and love, an insatiable desire dominates him of acquiring superfluous things and of inflicting upon others cruel wrongs. In the natural state man loves the independence to realize only his own interests. A good citizen, however, is he who promptly obeys the commands of his sovereign, strives with all his might for the common weal and prefers this unhesitatingly to his own interests, who considers nothing advantageous to himself except that which serves also the common good, and who shows himself accommodating to his fellow citizens. The true reason why the patriarchs united into the state is that they sought protection against the evils which threaten man from man. "Nisi judicia essent, unus alterum devoraret" (If there were no courts, one man would devour another). No other way would have had the same success as the foundation of states. Neither the mere existence of the natural law nor the fear of the deity would have been sufficient to check the malice of man, since "divine vengeance walks unfortunately with slow foot."

In the following Chapter VI Pufendorf investigates the internal structure of states. Within an *insignis multitudo hominum* a consensus of the wills, which otherwise run apart in a thousand different ways, is produced when everyone subjects his will to that of a single person or of an established council. At the same time everyone places his powers at disposal to carry out the now authoritative will. Consequently Pufendorf professes here the doctrine of the origin of the state through contract, which dominates the entire age of natural law. If Pufendorf

in all these deductions moves in the main in the path of Hobbes, with whom "the theory of the social contract began its scientific career" (Jellinek),[10] he continues to develop it nevertheless in an extremely interesting fashion, since he claims for the foundation of the state no less than two compacts and one decree, while Hobbes, to say the least, in his *Leviathan* (xviii), nine years after the work, *De cive*, protests against every contractual relationship between ruler and subject.

Pufendorf is much more democratic than Hobbes insofar as, after the first compact on the union of the future citizens together and after the decree on the form of government, he claims a second compact, which has absolutely a bilateral character. The possession of the newly created public power must bind themselves as a matter of fact to guard the public welfare and the public security, while the citizens must pledge their obedience. Only then does a true state exist. In this connection Pufendorf then takes up Hobbes' definition [11] of the state and, as the latter does, speaks of the state as a "moral person." If the public power is exercised through a council, it is in keeping with its purpose that the majority decide. The citizens are *originarii* (descendants of the state's founders) or *adscititii* (naturalized), both to be well distinguished from foreigners (*peregrini*).

With Chapter VII of the second part comes an investigation concerning the function of the supreme authority. In a systematic manner, of rare charm to us today, Pufendorf divides the public power in no less than seven functions (*potestas legislatoria, poenas sumendi, judiciaria, belli pacis ac foederum, creandi magistratus, indicendi tributa, constituendi doctores*). That the right of the head of the state to appoint public teachers is here placed on a par with the *potestas legislatoria* and the power over war and peace, must be explained from that overrating of the author's own position as such a *professor publicus ordinarius*, which has been peculiarly traditional to this calling through the centuries. So primitive and imperfect is the systematic arrangement of the public power in Pufendorf that he still follows Hobbes [12] in the orthodox position that this power in the last analysis is indivisible.

In logical conclusion to his teaching on the public power in general, Pufendorf in the following Chapter VIII deals with the different forms of government. In keeping with the well-known doctrine of Aristotle, he also distinguishes three categories of regular forms of government: monarchy, aristocracy and democracy. He ascribes to monarchy a

[10] Cf. hereon the explanatory remarks, which GEORGE JELLINEK makes in his *Allgemeine Staatslehre* (Berlin, 1914), chapter vii, on the doctrine of the justification of the state, concerning Hobbes and the relation between his doctrine and Pufendorf's.

[11] HOBBES, *De cive*, chapter v, § 9.

[12] *De cive*, chapter vii, § 5.

superiority over the other possibilities. Without distinction of the form of government, states can be unhealthy and corrupt through fault of man or fault of the state, for example, if the public institutions are not adapted to the genius of the people. Poorly functioning, unhealthy states pass over from monarchies, aristocracies and democracies, as Aristotle indeed teaches, to tyrannies, oligarchies and ochlocracies. Irregular states are those in which there is wanting that unity of the state's will which properly constitutes the characteristic of statehood. As proof of the foregoing, reference is made to the Roman Empire over which the *senatus populusque Romanus* once ruled. But the erstwhile Severinus de Monzambano does not neglect to point out in this connection that the irregularity of statehood can also arise from the fact that the nobles of a kingdom are subordinate to the king only as *inaequales foederati* (inferior colleagues). At the end of this chapter Pufendorf distinguishes two categories of state union, which we today, in accordance with the criteria suggested by him, call *Personalunion* and *Staatenbund.*

The following Chapter IX deals with the characteristics of civil authority. This authority is, apart from the form of government, supreme; the *imperium* is, as Pufendorf says, not only a *summum*, but also an *ἀνυπεύθυνον*, that is, "nemini mortalium obstrictum reddendas rationes" (not bound to render account to any human being). By this statement Pufendorf places himself in noteworthy opposition to the doctrine of the right of resistance of the monarchists which had reached its height especially in the seventeenth century.[13] The supreme authority is superior to all laws; their force and duration in fact depend upon it. Only on moral grounds is the *summus imperans* wont to submit to his own laws. The sovereign authority is holy and inviolable. The spirit of absolutism appears before our eyes here in shocking candor, even for so highstanding a moral personality as Pufendorf unquestionably was. Citizens must endure all caprices and cruelties of their prince. They should submit to the most cruel injustices and the most dire misfortunes, never should they draw the sword, but always should see in the sovereign, the father of his country, however cruel he may be.

Pufendorf distinguishes further the absolute authority of the monarch from that limited by a *lex fundamentalis*. But the absolute monarch must not alienate, divide or transfer his kingdom, if it is not a

[13] Pufendorf thereby also departs from Grotius. Grotius indeed denies in principle the right of resistance, but at the same time he recognizes, for seven particular cases in so large and uncertain a number, that the application of these principles would give a much slighter and much more uncertain guaranty for the stability of the civil authority than that of the doctrine of some avowed champions of the right of resistance. Cf. hereon the interesting explanations in the excellent work of my deceased pupil, KURT WOTZENDORFF, *Staatsrecht und Völkerrecht* (1916), pp. 247 ff.

patrimonial authority, but only if he is indebted to a free choice of the people for his crown. In the latter case he has more the position of a *usufructuarius*.[14]

Chapter X treats of the manner in which authority is acquired especially in a monarchical state. Though Pufendorf defends the proposition that every civil authority depends upon the consent of the subjects, he admits the possibility that one might seize the civil authority also in war by conquest. By a very artful construction he seeks to gloss over this contradiction. He speaks first only of the case of a just war, without considering that frequently unjust wars have led to conquests. Then he justifies the subjection of the vanquished by the fact that the victor does not need to spare the lives of the vanquished, but in addition he pretends also the consent of the vanquished who, because they furnished the cause of war, have consented as it were in advance to all the conditions which the victor might impose upon them. These discussions on the methods of acquiring authority are brought to a close by the precepts on the choice of monarchs, the interregnum and the inheritance of the crown.

In Chapter XI the author discusses the duty of the ruler. We rejoice to hear that if, as said above, the possessor of civil authority is exempt from all human and civil laws, still the character and the end of civil society as well as the tasks of civil authority impose upon him certain duties. Consequently there is drafted here a well-reasoned catechism of princely duties, nearly a generation before the noble Fénelon as tutor of the grandson of Louis XIV had sketched, in his work *Les aventures de Télémaque*, the ideal of an absolute ruler. The rule of conduct for rulers should be the idea: "Salus populi suprema lex esto." To educate the citizens up to good morals, public education should be fostered, the pure doctrine of Christ should flourish in the state and in the public schools such teachings should be imparted as are in conformity with the ends of the state. Moreover, we also obtain an abundance of wise precepts concerning the spirit of the laws, which the ruler should establish, their execution, the punishment for their violation, the prevention of injuries of citizens against one another, the selection of officials, the measure of taxation, the maintenance and increase of the general prosperity and the prevention of factions. At the end of the chapter these precepts on the duties of the prince are extended also to *international* relations. The courage of citizens and their skill in arms must be fostered. Everything which belongs to defense against violence, fortified places, arms, soldiers and especially money, must be available at

[14] Cf. Grotius, *De jure belli ac pacis*, Book I, chapter iii, § 11.

the proper time. Even in the case of a just origin of war, no one should be provoked to the extent of going to war, unless the opportunity is entirely propitious and the condition of the State is favorable thereto. Even in peace neighbors must be carefully watched and friendships and alliances contracted with prudence.

The following Chapter XII treats of civil laws in particular. These *leges civiles* ensure effectiveness for the *leges naturales* only when they are provided with penal sanction and when they ensure to the possessors of natural rights the protection of the authorities. At the same time they make definite the content of natural rights. The civil laws must be obeyed as long as they are not in open conflict with the *ius divinum.* This holds good also for the particular commands of the rulers. In the latter case it is well to distinguish whether it concerns the performance of an act of the ruler or an act on his own responsibility. Even an unjust war, which the ruler has declared, must be carried on by citizens, for here the responsibility and likewise the sin lies only with the ruler, but never should the citizen himself perform an act, which is in conflict with natural and divine law, even if he be commanded thereto, as for instance, as judge to condemn an innocent person to death. For no one can relieve the judge of his own responsibility.

With regard to Chapter XIII we confine ourselves to mentioning that it contains the natural law principles for criminal law, and pass over Chapter XIV also, which is concerned with the reputation of individuals in the State, the *valor personalis* (personal worth) and the right of the civil authority to dispose thereof. Pufendorf, in this connection, speaks also of questions of preeminence and precedence under princes and nations, but though these questions still played an important rôle in the practice of state life of his time,[15] he does not stop with that, but is only content with the stipulation that a right to precedence can be acquired only by agreement or concession.

The following Chapter XV treats of the rights of the supreme authority over the property of citizens,[16] and only with Chapter XVI do we come upon the soil of *international law.*[17] Following the model of Grotius, Pufendorf writes above the discussion of this chapter: "De bello et pace", consequently he puts the consideration of war first, in noteworthy contrast to the first sentence of his conclusions *that according to the natural law peace is the normal condition, in fact this condition*

[15] Cf. Stieven, *Europäisches Hofceremonial* (Leipzig, 1715).

[16] Cf. Grotius, *De jure belli ac pacis,* Book I, chapter i, § 6; Book II, chapter xiv, § 7; Book II, chapter i, § 15; chapter xix, § 7.

[17] For all the points raised in this chapter, compare the more detailed presentation in Pufendorf's work *De jure naturae et gentium libri octo,* Book VIII, chapters vi and vii; furthermore Grotius, *op. cit.,* Book I, chapter ii, § 3; Book II and Book III, *passim.*

distinguishes men from brutes. Yet at times he considers war not only permissible, but also necessary, when in no other way can our life and property be preserved and our lawful rights maintained. He also, in harmony with Grotius, sees in war only a means to the prosecution of rights and he rises far above Machiavelli, who considers war as a lawful means for the prosecution of state interests. Lawful war can also be an offensive war, if it is carried on for the prosecution of reparations claims and for the attainment of indispensable guaranties; the latter formula is indeed of dangerous elasticity. As Homer in the Iliad relates of the heroes of Greece that before embarking on their campaign of vengeance against the rape of Helen they dispatched an embassy to demand atonement, so Pufendorf desires in a conflict of states first of all the attempt at a peaceful settlement, especially in case of doubt about the right or the fact or even adverse possession. Peaceful negotiations, arbitral tribunal, or lot appear to him as suitable means.[18]

Terror and open force are the means of war, use may be made of trickery and ruses and the enemy may be deceived with false reports and tales, but promises and agreements are to be kept. And humanity commands that no more mischief be inflicted upon the enemy than defense, the vindication of right and security for the future require.[19] Pufendorf then distinguishes, according to the existence of a formal declaration of war, between *bellum solemne* and *bellum minus solemne*[20] and treats of the right to enter into war which fundamentally belongs only to the head of the state, but this does not debar every governor of a province or commander of a fortified place from having the right and duty of defense.

Moreover, the question of delicts and accountability under international law, so to speak, is investigated, since Pufendorf raises the question whether the ruler of a state or the whole state can be attacked by war for acts which do not proceed from them. The reply to this question is wisely made dependent upon whether there is any responsibility on the part of the state, for example, if the ruler has suffered injuries to be done by his own citizens against those belonging to a foreign state. The power of the supreme authority to prevent an injury to another state is presumed, unless the contrary is proved. A duty to deliver up those belonging to a foreign state for punishment is in this connection recognized only so far as provided for by particular agreements.[21] In

[18] Cf. Grotius, *op. cit.*, Book II, chapters xxiii and xxiv.
[19] On this question compare Grotius, *op. cit.*, Book III, chapters xi–xvi.
[20] Grotius, *op. cit.*, Book III, chapter iii.
[21] This corresponds to the practice of that time, but on this question compare also Grotius, *op. cit.*, Book II, chapter xxi, § 4.

connection with the question of responsibility of the state, moreover, the right of reprisals is discussed, which, because of the debts of a state or of injuries inflicted by it, can be exercised against the property as well as the person of its citizens abroad.[22]

The following section of this chapter treats of wars of alliance. In addition to the supposition that the other state, on whose side one enters, has taken up arms for a just cause, it also supposes that a satisfactory reason to support it is present. The latter considerations naturally disappear if the point in question is the existence of a treaty of alliance. There is still to be examined whether the allies are not perhaps beginning an unjust or imprudent war, and even, if this question is to be answered in the negative, the interests of the ally must yield precedence to the possible needs of our own citizens. Even without an alliance relationship one can come to the assistance of his friends; indeed Pufendorf recognizes that the *communis cognatio* can be sufficient occasion for coming to the help of the unjustly oppressed at their request,[23] since he has an intense appreciation of international solidarity.

The use of poison and the bribery of foreign citizens and soldiers to slay their own rulers are considered by the more civilized nations as dishonorable means of war.[24] Following this the right to spoils is briefly treated. Of the fundamental unassailability of private property in war Pufendorf as yet knows nothing. Movable property is considered as acquired if it has been brought into safety from the enemy's pursuit; immovable property, if the captor can drive away the enemy who desires to take it back again into his possession.[25] But the right to recover it is only extinguished if the former owner has in the treaty of peace renounced all his rights. Spoils belong fundamentally to the state, not to the soldiers;[26] movable property, however, especially such as is of small value, according to widespread usage is left to the soldiers. Immovable property, wrested back, reverts to the former owner;[27] movable property forming part of the spoils, which has been wrested back, remains for the most part to the soldiers who have captured it.

As has already been stated by Pufendorf in another connection, victory also gives the right to authority over individuals as well as over whole peoples. But to make the supreme authority legitimate and to bind the consciences of the subjects, the vanquished must have given their word to the victors and the victors must have changed their hos-

[22] Hereon see GROTIUS, *op. cit.*, Book III, chapter ii.
[23] Cf. GROTIUS, *op. cit.*, Book II, chapter xxv.
[24] Cf. GROTIUS, *op. cit.*, Book III, chapter iv, § 18.
[25] GROTIUS, *op. cit.*, Book III, chapter vi, §§ 2 ff.
[26] GROTIUS, *loc. cit.*, § 8.
[27] GROTIUS, Book III, chapters ix and xvi.

tile attitude toward the vanquished, as if an extorted pledging of word could replace an actual *consensus civium*, upon which Pufendorf's entire theory of the state is erected! At the end of this chapter devoted to war Pufendorf treats of truces [28] and peace treaties.[29] A truce may extend to a complete laying down of arms, not only to a temporary cessation of their use; then it is as it were a temporary peace, while real peace is based upon perpetual duration. A so-called tacit truce is not a legal conception. Peace treaties must be faithfully observed.

Chapter XVII of the work also pertains to international law. Here the author treats of alliances and agreements between states.[30] He divides them into the following two groups, those which cover duties already enjoined by the natural law and those which add something over and above the duties enjoined or at least give them greater precision. In the former class he enumerates all such obligations as follow from humanity, such as agreements for friendship, hospitality and trade. The second class he distinguishes further into *foedera aequalia* and *inaequalia*. In the latter he enumerates among others those which in their content create an inequality between the contracting states. They might include an encroachment upon sovereignty, for example, if one state promised another not to exercise definite rights of its governing authority without the permission of the state which has become the superior through such a treaty. Accordingly, Pufendorf would have rightly considered the Boer republic, Transvaal, as no longer a sovereign state on account of the agreement of August 3, 1883, by which Transvaal was required to submit its international agreements to London.

On the other hand, he rightly emphasizes that burdening conditions, which do not include a permanent subjection, but can be fulfilled by an act done once and for all, such, for example, as are imposed on the vanquished in peace treaties, do not diminish their sovereignty. However, under certain circumstances there may be question of duties of a lasting nature, which nevertheless are completely in harmony with the sovereignty of a state, as, for example, if the treaty obligation is imposed unilaterally not to establish fortifications in certain regions. Pufendorf considers league and commercial treaties as the most frequent, and those extending permanently to a confederation of several states, through which consequently a sort of league of nations is established, as the strictest and most intimate. Finally, Pufendorf distinguishes between *foedera realia* and *foedera personalia*.[31] The latter

[28] Grotius, *op. cit.*, Book III, chapter xxi, §§ 1–14.
[29] *Loc. cit.*, chapter xx.
[30] Cf. Grotius, *op. cit.*, Book II, chapter xv.
[31] *Op. cit.*, chapter xvi, §§ 7 and 8.

expire with the death of the princes by whom they are concluded, while the former bind the state itself. To be carefully distinguished from *foedera*, though also in the same general category with them, are mere engagements (*sponsiones*) of the ministers, which are entered into without instruction from the sovereign and through which the latter is obligated only when he has ratified them.

The work of Pufendorf concludes with Chapter XVIII, "De officiis civium". Here are sharply distinguished the general duties of citizens from such duties as depend upon a particular official relationship. The former have regard to the rulers of the state, the state in its entirety and individual fellow citizens. Corresponding to the more or less patriarchal spirit of the absolutist age, there is elaborated here a duty under natural law of citizens of a state toward the ruler of the state, to accommodate themselves in peace to the existing constitution and not to strive for innovations, "to admire and to revere" the head of their state and not only to speak but also to think kindly and respectfully of his actions. Besides, to be sure, there also exist, as said above, duties of citizens toward the state as a whole and toward fellow citizens. For the particular duties of those citizens who stand in closer relations to the state as functionaries, the moral proposition is laid down by way of premise that no one should seek, to say nothing of undertaking, an office, for the performance of which he must consider himself as unfit. For the rest, a special professional ethics is laid down for ministers, religious dignitaries, scholars and professors, administrators and judges, officers, soldiers, ambassadors and envoys, and superintendents and tax-collectors. The general duties of citizens cease with emigration, the legal deprivation of the right of citizenship and the necessity of submitting to the rule of a victor.

4. *The Importance of the Work*

The value of Pufendorf's work, *De officio hominis et civis*, lies not in the manner in which the author deals with the individual questions of international law. Out of the eighteen chapters of the work, only two (Chapters XVI and XVII) deal with matters of international law in particular, consequently only a small portion of the whole. What is presented in these scanty discussions may be traced back entirely to Grotius. In spite of his democratic conception of the state, which bases the state not only upon *one* compact, but, as has been set forth above, requires a second compact with the ruler, a compact of bilateral character, which defines their rights and duties, he does not venture to apply this doctrine of the right of self-determination of the nation to

what concerns international law. He recognizes here as before the right of conquest, and deduces the tacit *consensus* of citizens, forced into subjection to the new sovereignty, from the cause of the war furnished by hem, with which they have accepted for themselves in advance the consequences of the war, as if the desire for war did not proceed solely from an aggressor greedy for conquest and the vanquished could not be altogether innocent of the war. An interesting demonstration how even the adherents of natural law, who ostensibly derive the law solely from reason, were inclined in practical questions to adapt their conclusions on law to the practice of their age! Pufendorf's conclusions, therefore, in the field of international law, so far as they are contained in this work, present no tangible contributions.

Nevertheless one should not underestimate the importance of his work. In the depth of his ethical thinking he places, as the title of his work indicates, the entire system of law under the stamp of the *concept of duty*. And this concept of duty is derived from the abstract ideal of sociability. His fundamental idea is the social man. From this postulate is derived in a somewhat grandiose manner the entire system of private and public law. The idea, "Thou art not alone here in the world," affords the point of departure for all legal relations; it holds for mankind as for states. This deep, moral world-philosophy stands towering over all the doctrine harking back to the Hegelian deification of the individual state: "The social ideal is the victorious war." For apart from the fact that the prudent knew, even before the World War, that modern war in our age of world commerce weakens the victors as well as the vanquished, the regulatory principle for state relations can be established only upon the simultaneous prosperity of all. This idea Pufendorf had already accurately discovered. But if the international economic life of the present has in unexpected ways wrenched the states loose from their previous isolation and brought them closer together, then the point of departure of all legal relations which furnished the soil for the doctrinal system of Samuel von Pufendorf, "Thou art not alone in the world," must be authoritative in increased measure today for the relations of states under international law.

An epoch, which has as its task the "socialization of international law," [32] must recognize in Pufendorf therefore a leader and pathfinder. And if we today must consider it as an error of method that Pufendorf according to the model of Hobbes allowed international law to disappear altogether in natural law, perhaps the setting forth of this doctrine

[32] Cf. hereon the replies, which under the title, "*Jus naturae et gentium*," an inquiry for the anniversary of Hugo Grotius, appeared as a separate from Vol. 34 of the *Zeitschrift für internationales Recht*, edited by Professor Dr. TH. NIEMEYER at Kiel in 1925.

concerning the obligatory power of natural law, in an age in which international law as the youngest branch on the tree of legal development was in practice still a very delicate little sprig, has in large measure been beneficial. The development of the idea of international law was thereby substantially facilitated and at that time it was possibly chiefly dependent thereon. We as jurists know better today than Pufendorf how to distinguish between a philosophical right, which is developed purely from reason and which should be a just right, and actually valid positive right, which may be a material injustice,[33] but we also know that it is always proper to continue to develop valid right rationally under great guiding principles, and that our age, which has overcome space and has completely transformed the face of the earth, needs the solution of this problem more urgently than any other. In the necessary and complete conquest of the age which lies behind us, of a mode of thought which is more or less historical, the natural lawyer, Pufendorf, consequently will be of assistance to us. Therefore, he, who as author more than 250 years after the appearance of his work still deserves consideration, is rightly counted among the "Classics" of international law.

WALTHER SCHÜCKING.

June 10, 1925.

[33] Cf. hereon the statement of SCHÜCKING-WEHBERG, *Die Satzung des Völkerbundes* (2d edition, Berlin, 1924), p. 152.

[*The Title-Page of the Edition of 1682*]

THE TWO BOOKS ON THE DUTY OF MAN AND CITIZEN ACCORDING TO THE NATURAL LAW [i]

BY

SAMUEL VON PUFENDORF

CAMBRIDGE
FROM THE HOUSE OF JOHN HAYES
Printer to the Celebrated University
1682

At the Charges of John Creed, Bookseller, Cambridge.

[iii] TO THE VERY ILLUSTRIOUS AND CELEBRATED GENTLEMAN

GUSTAVE OTTO STEENBOCK

COUNT IN BOGESUND

FREIHERR VON CHRONEBECH AND OHRESTEEN, ETC.

ARCHITHALASSUS OF THE KINGDOM OF SWEDEN

AND CHANCELLOR OF THE CAROLINE UNIVERSITY OF THE GOTHS, ETC.

MY MOST OBLIGING LORD

Most Illustrious and Distinguished Count, [iv]
Most Obliging Lord,

No slight doubt troubled my distraught mind, as to whether it would be quite proper for such an insignificant work to claim for itself the auspices of such an illustrious name. For on the one hand the smallness of the little book caused a blush because it possessed no genius or splendor, seeing that it embraced merely the first rudiments of moral philosophy excerpted almost entirely from our more lengthy work. But just as it can furnish some use perhaps to those who are undertaking the first step to that study, so, if account must be taken here of your dignity and my obligation, it will seem sufficiently suitable for neither. On the other hand, your private no less than your public merits stimulated [v] a mind so devoted to your Most Illustrious Excellency, so that I thought it a brand of ingratitude to be vigorously feared, if I neglected any such occasion at least of attesting how much it was beholden to You.

Nor do I now speak of those merits whereby through noble achievements at home and abroad you have rendered the country especially obligated to you, and at the same time have since dedicated your name to immortal glory. To recount those deeds commensurately with their dignity is the task of history, which, while it is relating at length the glorious deeds of your nation and the spreading of its arms victoriously throughout so many regions, finds you always an important factor in such great achievements; and wonders that the same man, when there has been a cessation from war, blossoms forth no less in the arts of peace, applying himself first to the government of a very large province and afterwards to a protecting administration of the entire kingdom.

Rather would it have been proper in this place to touch upon those gifts which have been received from your Most Illustrious Excellency by this newly established University in which it was given to me to fix the abode of my fortunes upon the invitation of the All-Highest King. It can never, in proportion to your merits, proclaim you enough as the wisest as well as the kindest defender and greatest moderator, while it daily finds you striving earnestly and untiringly for its own advantages and embellishments among such a great mass of public business.

Indeed with what respect ought I value the benefits which
[vi] your Most Illustrious Excellency has conferred upon me in an especial manner? To others it is the height of their wishes to become known to men of rank and to be approved by them. But to me your effusive favor has been pleasing to such an extent that more than once have I experienced it most liberally bestowed both in promoting my advantages and in turning aside from myself the assaults of malevolent persons. Although it is far beyond the measure of my means to make any return for these favors, yet it will surely be necessary at least to acquit myself of a humble attitude of mind and a candid acknowledgment of so many benefits, inasmuch as the benevolence of great men has this characteristic also, that it gladly allows itself to be satisfied with the attestation of a grateful mind. And because it is customary for noble-minded men of their own accord to attach honor to even a slight exhibition of reverence for themselves by way of expressing one's loyalty, the goodness of your Most Illustrious Excellency bids me to hope likewise for this, that I may not seem to have been wanting to your greatness, if I make use of such a petty work as an occasion of publicly expressing my mind which is so devoted to your Excellency.

For it would be too much to expect from me a work which is brilliant and which can attain a long life, especially since geniuses are tremendously chilled, if they discover that, while they are striving to snatch themselves away from the common crowd, malice and ignorance use their teeth upon them with impunity and no regard is had for repose. Yet my mind will begin to bloom forth with new vigor and will cast aside the weariness that has sprung up, if I shall have understood that this homage has been received by your Most Illustrious Excellency with a placid brow, and if at the same time you shall have bid me rest easy forever about your favor and patronage. So may God preserve
[vii] your Most Illustrious Excellency flourishing and vigorous for many years as the glory and gain of your country, your most brilliant family, and our new Commonwealth!

Your Most Illustrious Excellency's
most devoted,
SAMUEL PUFENDORF.

Lund, January 23, 1673.

TO THE BENEVOLENT READER, GREETING![1] [viii

If the custom accepted by many erudite men had almost the force of law, it might have seemed superfluous to say anything by way of preface regarding the *raison d'être* of this work, since the subject matter itself tells sufficiently that I have done nothing else than set forth for beginners the chief headings of natural law, briefly, and, I think, in a clear compendium, lest, if they mingled themselves into the diffuse regions of this study beyond as it were an elementary knowledge, they be put to flight by the abundance and difficulty of the subject matter from the very beginning. At the same time it seemed to be to the public advantage that the minds of studious youths be imbued with moral doctrine of this character, in order that its manifest use in civil life might be considered. And although otherwise I would always have judged it inglorious to reduce to a compendium the more extensive writings of others, and much more of myself, yet when the authority of superiors is added, I do not think that the prudent will [ix] blame me for having wished to devote this labor simply to the advantage of youth, whose approval deservedly should be so great that a work undertaken for their favor, even when it does not possess genius or brilliancy, should not be judged unworthy by anyone. But that principles of this character are not more suitable for the entire study of law than any elements of civil law, no one denies who has half a sane head. And this might be sufficient for the present, did not some counsel that it would not be amiss to preface some remarks which might make for the understanding of the character of the natural law as a whole and the more accurate marking off of its limits. I have undertaken this all the more willingly because in this way a pretext is taken away from men who are importunately curious to put forth their feverish criticism upon this study, which, though often as it were intermingled, is separated from their province.

Therefore it is manifest that from three founts, so to speak, men derive the knowledge of their duty and what in this life they must do, as being morally good, and what not to do, as being morally bad: namely the light of reason, the civil laws and the particular revelation of the divine authority. From the first flow the commonest duties of man, especially those which make him sociable with other men; from the second, the duties of man in so far as he lives subject to a particular and definite State; from the third, the duties of a man who is a Christian. From this three separate studies arise, the first of which

[1] [This Greeting and the preceding Dedicatory Letter and Title-Page have been translated by Herbert F. Wright.]

[x] is the natural law, common to all nations; the second, the civil law of the single individual States, into which the human race departed. The third is called moral theology in contradistinction to that part of theology which explains what is to be believed [that is, dogmatic theology].

Each of these studies uses a method of proving its dogmas corresponding to its principle. In the natural law it is asserted that something must be done because the same is gathered by right reason as necessary for sociability between men. The last analysis of the precepts of the civil law is that the law-giver so established. The moral theologian acquiesces in that ultimate proposition, because God has so ordered in the Holy Scriptures. But just as the study of civil law presupposes the natural law as a more general study, so if the civil law contains anything upon which the natural law is silent, not on this account is the latter to be counted repugnant to the former. In a similar way, if in moral theology some doctrines are handed down as flowing from divine revelation to which our reason does not extend and therefore which the natural law ignores, it would be very ignorant on that account to match the former with the latter or imagine some repugnance between those studies. Vice versa, if any principles in the study of the natural law are presupposed from that which can be investigated by reason, on this account in no wise are the former opposed to those which the sacred literature hands down with greater clearness upon the same subject, but are only conceived
xi] by abstraction. Thus, e.g. in the study of the natural law, by abstracting from that knowledge which is drawn from the Sacred Scriptures, the condition of the first man is fashioned, howsoever he was projected in the world, in so far as reasoning alone can attain it. To oppose such principles to those which the divine literature hands down concerning the same condition, "this indeed is the juice of a black cuttlefish, this is mere envy."[1]

Indeed just as there will easily be harmony between the civil law and the natural law, so it seems a little more difficult to determine the boundary lines between the same natural law and moral theology and to define the chief respects in which they differ. I shall briefly set forth my opinion upon this matter, not indeed by virtue of papal authority, as if it would by some privilege protect me from all error, nor as one who from dreams sent down from on high, or some irrationable instinct, is animated with a trustworthiness of some singular illumination; but as one who is minded to ornament the Sparta which has been entrusted to him in proportion to the slight measure of his genius. In such a way, however, that, just as I am ready to gladly listen to the better suggestions of prudent and erudite men and to correct my previous pronouncements without obstinacy, so I do not

[1] [HORACE, *Sermones*, 1, 4, 100-101.]

care a straw for those rivals of Midas, the critics who wantonly rush into judgments upon matters which are no concern of theirs, or for a whole nation of busybodies whose character Phaedrus very cleverly depicts. "Tremblingly," he says, "they run about, busy in idleness, panting freely, doing much in doing nothing, troublesome to themselves and detestable to others." [1]

The first distinction therefore, whereby those studies are mutu- [xii] ally separated, results from the different source from which each derives its dogmas, and upon this point we have just touched. Consequently, if there be some actions which we are bid by divine literature to perform or not to perform, yet whose necessity can not be grasped by reason left to itself, those actions fall outside the natural law and properly look toward moral theology. Moreover in theology law is considered proportionately as it has annexed a divine promise and a certain sort of pact between God and man. From this consideration the natural law abstracts, obviously since that which reason alone can not discover proceeds from the particular revelation of God.

Furthermore, that is by far the most important distinction whereby the end and aim of the natural law is included only in the circuit of this life, and therefore it moulds man accordingly as he ought to lead this life in society with others. But moral theology moulds a man into a Christian, who should not only have the purpose of passing honorably through this life, but who especially hopes for the fruit of piety after this life and who on this account has his πολίτευμα [policy] in heaven, while here he lives merely as a wayfarer or sojourner. For although the mind of man not only with a glowing desire leans, as it were, towards immortality and vigorously shrinks from self-destruction, and hence among many of the Gentiles the persuasion has become inveterate that the soul remains after its separation from the body and that then it will go well with the good and ill with the bad; nevertheless a persuasion of this sort on such [xiii] matters, in which the mind of man might plainly and firmly acquiesce, is drawn only from the word of God. Hence the decrees of the natural law are adapted only to the human forum, which does not extend beyond this life, and they are wrongly applied in many places to the divine forum, which is the especial care of theology.

From this also it follows that, because the human forum is busied with only the external actions of man, while to those which lie concealed within the breast and produce no effect or sign outside it does not penetrate and consequently is not disturbed about them, the natural law likewise is concerned to a great extent with the directing of the external actions of man. But for moral theology it is not sufficient that the external customs of men have been made in some

[1] [PHAEDRUS, 2, 52.]

way or another in keeping with decorum; but it is concerned chiefly with this, that the mind and its internal movements be fashioned after the will of the deity; and it reprobates those very actions which extrinsically indeed appear to be proper, but nevertheless emanate from an impure mind.

And this too seems to be the reason why in the divine books there is not so frequently question of those actions which have been forbidden under penalties of the human forum or concerning which the rights are there declared as of those actions which (to use the
[xiv] words of Seneca) are outside of public documents. This is manifestly evident to those who have carefully examined the precepts and virtues inculcated therein, although, while those very Christian virtues dispose the minds of men as much as possible to sociability, moral theology likewise promotes in a most efficacious manner honesty of civil life. So also vice versa, if you see anyone who shows himself a turbulent and troublesome member of civil life, you may safely judge that the Christian religion clings inside his lips only and has not yet penetrated his heart. And from this not only do I think that the genuine limits are manifestly evident which separate the natural law, as laid down by us, from moral theology; but also that natural law is by no means repugnant to the dogmas of true theology, but only abstracts from some of its dogmas which can not be investigated by reason alone.

Hence it is also patent that man now necessarily confides in the teachings of natural law, accordingly as his nature has been corrupted and consequently as he is an animal bubbling over with many wicked desires. For although no one is so stupid as not to perceive in himself affections that are inordinate and tending out of the beaten path, yet, if the divine literature did not light the way, no one could now be certain that that rebellion of the affections arose through the fault of the first man. And consequently since the natural law does not extend to those things to which reason can not reach it would be incongruous to wish to deduce it from the uncorrupted nature of man.
[xv] Especially since many commandments of the Decalogue itself, seeing that they are couched in negative terms, manifestly presuppose the corrupted nature of man.

So, for example, the first commandment seems certainly to presuppose the proclivity of man to believe in idolatry and polytheism. For if you suppose men as endowed with a nature still uncorrupted, in whom the knowledge of God was perfectly clear and who from time to time enjoyed His familiar, so to speak, revelation, I do not see how it could possibly enter the mind of such a man to fashion for himself something which he would wish to worship in place of the true God or along with Him, or believe that divinity was inherent

in that thing which he himself had fashioned. Therefore there was no need to enjoin upon this man in negative terms, not to worship strange gods, but for him was sufficient the simple affirmative commandment, love, honor and worship God Whom you recognize as the Creator of this Universe and your own Creator likewise.

The same thing obtains with regard to the second commandment. For why should he be forbidden by a negative commandment to blaspheme God who clearly understood His majesty and benefactions and whom no wicked desires disturbed, and whose mind quietly acquiésced in the status assigned to it by God? How could such an insanity take possession of him? Nay rather he was to be advised with an affirmative commandment only, to glorify the name of God.

Yet we must apparently speak otherwise with regard to the third as well as the fourth commandment, for since they are affirmative and do not necessarily presuppose a corrupted nature, they may find [xvi] place in either status. But concerning the rest of the commandments, which have regard for one's neighbor, the matter is likewise very evident. For upon man, such as he was established by God in the beginning, it was sufficient simply to enjoin that he should love his neighbor; to this his nature was inclined. But how could he be commanded not to kill, when death had not yet fallen upon man, since it entered the world through sin?

But there is the greatest need of a negative commandment now when instead of love so many hatreds stalk among men that there is a great crop of those who from mere envy or lust for attacking another's fortune do not hesitate to overthrow others who are not only innocent but even friends and deserving well of them, and indeed who do not blush to pass off a terrible and rash attack of a turbulent mind under the word conscience. So why was there need expressly to forbid adulteries among those spouses who loved each other with such an ardent and sincere love? Or why was it relevant to forbid thefts, since there was no avarice, no penury as yet, and no one thought something belonged to himself which could benefit another? Or why was it necessary to forbid false testimony, since they did not yet exist who thereafter strove to obtain fame and glory for themselves, if they could asperge another by a base and stupid false accusation? So that it would not be inapt to apply to this that state- [xvii] ment of Tacitus: "The most ancient of mortals, as yet without evil lust, used to live without baseness, crime, and therefore without punishment and coercions; and since they desired nothing beyond custom, they were forbidden nothing through fear." [1]

And these very words when well understood can open the way to remove the doubt, whether therefore there was a different law in

[1] [Tacitus, *Annales*, 3, 26.]

the state of uncorrupted nature or indeed the same law? Here reply can be made in a few words; that the chief headings of the law are the same in both states, but that the many particular precepts vary on account of the diversity of the human condition; or rather, that the same essence of the law is unfolded through different, though not contrary, precepts, according as the man by whom the law must be observed exists in a different manner. Our Saviour reduced the essence of the law to two heads: Love God and love your neighbor. To these heads can be referred the entire natural law, in the uncorrupted as well as in the corrupted state of mankind; unless because in the uncorrupted state there seems to have been little or no difference between the natural law and moral theology. For the sociability, which we have laid down as the foundation for the natural law, may be properly resolved into love of neighbor.

But when we come down to the particular precepts, surely no slight distinction arises with regard to the affirmative as well as the negative precepts. And indeed, so far as the affirmative precepts are concerned, not a few of them exist now in the present state for which there does not seem to have been room in the primeval state: and this partly because they presuppose an institution such as it is not
[xviii] clear whether it falls to the happiest condition of mankind; partly because they are not intelligible without misery and death which was exiled from that state. For example, it is now among the precepts of the natural law not to deceive another in a buying or selling, not to use a false ell, measure or weight, to return borrowed money at the time agreed upon. But it is not yet perfectly clear whether, if the human race had remained free from sin, commercial relations of the same character as are now carried on would have been put into practice, and whether there would then have been any use for money. So if such States as now exist had no place in the state of innocence, there was likewise no place there for precepts which presuppose States of this kind and the authority contained in them. Now too we are bidden by the natural law to succor the needy, to aid those oppressed by an unfortunate calamity, to take care of widows and of orphans. But these are prescribed in vain to those who are not subject to misfortune, need and death. We are now bidden by the natural law to be prone to condone wrongs and to seek out peace. This would be fruitless among those who do not sin against the laws of sociability.

And this very thing is likewise manifestly evident in negative precepts, which have regard for the natural (not the positive) law. For although any affirmative precept may virtually contain an interdict of everything opposed (for example, he who is bidden to love
[xix] his neighbor, by that very fact is forbidden to do all those deeds to him which are repugnant to love); nevertheless it seems superfluous

that they be set apart by express precepts when no wicked desires impel [one] to commit such deeds. To illustrate this we can bring forward the fact that Solon was unwilling to set aside a punishment for parricides by public law, because he did not think that such a great crime would fall to the lot of any son. Similar to this is the statement of Francisco Lopez de Gomara[1] concerning the peoples of Nicaragua, that there was no punishment decreed among them for him who had killed a petty chief (*cacique*, they called him), because, they said, there was no subject who wished to think up or perpetrate so dire a crime.

I fear that it may seem affected to inculcate these principles which are so patent to the majority. Yet for the comprehension of beginners I shall add this example. There are two boys of altogether different dispositions entrusted to the education of someone. One is modest and bashful and glowing with a great love for letters. The other is dissolute, petulant, and loves abominable lusts rather than books. The substance of the duty of both is the same, to learn letters. But the individual precepts are different. For it is sufficient to enjoin upon the former what studies, at what time, and with what method he ought to treat them. The other, besides these precepts very sharply given, ought to be forbidden under threat to run around, to play dice, to sell his books, to depend entirely upon another in composing his exercises, to be a dude, to consort with harlots. In the same way if anyone would teach a boy of the former disposition to declaim carefully, he will bid him εὐφημεῖν [use felicitous expres- [xx]
sions], and him who is not affected with any desire of such things, to sing them to anyone rather than to himself.

From which it is manifest, I think, that there would be a far different aspect of natural law, if anyone wished to presuppose the state of man to be uncorrupted. And at the same time since the limits whereby this study is separated from moral theology are so clearly marked off, this study would be in no worse condition than civil jurisprudence, medicine, natural science or mathematics; if anyone should dare to burst forth into them ἀμύητος [uninitiated], arrogating censure to himself unchosen, people would not hesitate to exclaim what Appelles once said to Megabyzus who was attempting some discourse or other upon the art of painting: "Be silent, I beseech you, lest the slave-boys who prepare the white paint laugh at you, in your attempt to speak upon subjects which you have not learned." But it will be easy for us to suit good and kindly men. The evil minded and unlearned calumniators, however, it were better to entrust to their own envy for punishment, seeing that it is certainly clear and based upon the eternal law that the Ethiopian does not change his skin.

[1] *La Historia General de las Indias*, ch. 207. [The reference is to be found in Chapter 206 in the edition published at Antwerp in 1554.]

[xxi]

TABLE OF CHAPTERS

Book I

[xxii]

Book II

[1] [The numbers in brackets refer to pages of this translation.]

THE FIRST BOOK 1

ON

THE DUTY OF MAN AND CITIZEN

BY

SAMUEL VON PUFENDORF

CHAPTER I

On Human Action

1. Duty is here defined by me as man's action, duly conformed to the ordinances of the law, and in proportion to obligation. To understand this, it is necessary to treat first of the nature of human action, and also of laws in general.

2. By human action we understand not any motion proceeding from the faculties of man, but that motion only which proceeds from and is directed by those faculties which the Creator [1] has given to mankind above the brutes,—I mean that which is undertaken with intellect lighting the way, and at the bidding of the will.

3. Man has in fact been granted the power not only of knowing the different things which he meets in this universe, of comparing them and of forming new notions in regard to them, but also the ability to foresee what he is going to do, to bestir himself to accomplish it, to shape it to a certain norm and a certain end, and to infer what the result will be; and further, to judge whether things already done conform to rule. Moreover, not all the faculties of man act continually or in a uniform manner. Some of them, in fact, are excited, 2
and then controlled and directed, by an impulse from within. Finally a man is not attracted to all objects indifferently, but seeks some and shuns others. Often too, though the object be present, he checks the impulse, and when several objects are before him, he selects one and rejects the others.

4. With regard then to the faculty of comprehending and judging things—intellect it is called—we must hold it absolutely certain that any man of mature age and sound mind has enough of natural light to be able, with training and due reflection, to comprehend properly at least those general precepts and principles which make for an honorable and a peaceful life in this world; also to appreciate the fact that they are in conformity with human nature. For if this be not admitted, at least within the competence of the human court, men would be able to shield any misdeeds of theirs by an invincible ignorance, since in the human court no one can be accused of violating a rule which it is beyond his powers to comprehend.

[1] [Here and elsewhere where God is mentioned, Pufendorf has "O. M."= "Optimus Maximus," but it has been thought best to omit this expression in the translation.]

5. When a man's intellect has been well instructed as to what is to be done or left undone, to the point of understanding how to give certain and unmistakable reasons for its opinion, we call this a right conscience. But when a man has indeed a correct opinion as regards doing and leaving undone, without the ability to establish the same by argument, having acquired it from the general tenor of life in a community, from habit, or from the authority of superiors, and having no reason impelling him to the opposite course, we call this a probable conscience. By this the greater part of men are guided, for it has been given to few to discover the causes of things.

6. To some, however, it happens not infrequently, especially in regard to particular cases, that arguments for both sides suggest themselves, and they lack the strength of judgment to see clearly which have greater weight. This is usually called a doubtful conscience. And here is the rule for it: So long as judgment is uncertain as to what is good, or what bad, action must be suspended.
3 For while the doubt is unremoved, the decision to act involves an intention to do wrong, or at least neglect of the law.

7. Often too the human intellect mistakes the false for the true, and then is said to be in error. And error is usually called vincible, when a man with attention and due care can avoid falling into it; but invincible, when even by employing all the diligence which the circumstances of the common life require, one could not avoid the error. This sort, however, at least among those whose heart's desire it is to nurture the light of reason and order their lives in accordance with honor, does not usually happen in regard to the general precepts for living, but merely in connection with particular matters. For the general precepts of the natural law are clear; and then he who makes positive laws follows the custom and the duty of taking special pains that they be made known to his subjects. Hence, without supine neglect, this error does not arise. But in particular matters it is easy for error in regard to the object and other circumstances of the action to steal in against a man's will and without his fault.

8. But where there is simply an absence of knowledge, this is called ignorance. And the latter is treated in two ways, first, according as it contributes to the action; second, according as it comes about against the will, or not without blame. From the former point of view ignorance is usually divided into the effectual and the concomitant. In the absence of the former the action in question would not have been undertaken. The latter may have been absent, and still the action would have been undertaken. From the second point of view ignorance is voluntary or involuntary. The former is even knowingly affected, the means of arriving at the truth having been

rejected; or, failing to employ due diligence, one has allowed it to steal in unawares. The involuntary ignorance is when one does not know what he could not know, and was not bound to know. And this again is twofold. For either a man was unable, indeed, to avoid ignorance for the present, and yet was to blame for being in that state; or else he was not only unable to conquer his ignorance for the present, but is also not to blame for having fallen into such a condition.

9. The second faculty which is exclusively seen in man, as 4
compared with the brutes, is called the will. By means of this, as from some inward impulse, a man bestirs himself to action, and chooses what especially attracts him, rejects what does not seem to him suitable. From the will, therefore, man derives the power of acting of his own accord, in other words, the fact that he is not set to act by some inward necessity, but is himself the author of his own action; also the power of acting freely, which means that, when one object is put before him, he can act or not act, and choose the same, or reject it, or if several objects are set before him, can select one and reject the rest. Moreover some human actions are undertaken on their own account, some in so far as they serve to gain another object, that is, some have the functions of an end and others of means. Hence as regards an end, the concern of the will is first to recognize and approve it, then to bestir itself effectually to gain it, with more or less earnestness of aim; then having attained, to rest in quiet enjoyment of it. As for means, they are first approved, then the most suitable, as it appears, selected, and finally put into practice.

10. And just as the chief reason for considering a man responsible for his own acts is that he undertook them of his own will, so we must especially observe that the freedom of the will is by all means to be asserted, at least in regard to the acts for which a man is commonly held to account before a human court. But where no freedom at all is left a man, there he will not himself be held responsible for an act to which he unwillingly lends his limbs and powers, but the other man, who brings constraint to bear.

11. Furthermore, although the will always chooses a generic good, and avoids a generic evil, still, as between individuals, we see a great diversity of desires and actions. And the cause is the fact that not all good and bad things appear to a man uncontaminated, but mixed together, good with bad, bad with good. And because different objects affect peculiarly different parts, so to say, of the man,—some, for example, his self-esteem, some his external senses, 5
some his self-love, the instinct of self-preservation,—the result is that the man views these different objects as respectively becoming, agreeable, and useful. And each of these makes the man incline

especially toward itself, in exact proportion to the strength of the impression it has made upon him. There is in most men a special penchant also for certain things, and aversion to others. Consequently, in almost any action different kinds of good things and bad, real or apparent, crop out together, and to distinguish these truly, some men have more, some less, of penetration. It is no wonder then that one man is carried away to that which is especially abhorrent to another.

12. Moreover, the will of man is not always found in equilibrium as regards any action, so that his inclination to this or that side comes from his own inward impulse alone, after maturely weighing everything. But most frequently the man is impelled in the one direction rather than in the other by external influences. For, not to mention the common proclivity of human beings to the bad, the origin and nature of which it is not for our court to examine, the will gains a special penchant from a peculiarly constituted nature, by which some are much inclined to a certain kind of action. And this is observed not only in individuals, but also in entire nations. It appears to be produced by the character of the atmosphere all about us, and of the soil, also the combination of humors in the body, resulting from birth itself, age, food, health, occupation, and similar causes; further by the conformation of the organs, which the mind uses in performing its functions, and so on. Here we must note that not only can a man with care repress and alter his temperament considerably; but also, no matter how much force is attributed to the latter, it must not be thought to have such strength as to force the man necessarily into violation of the natural law, in so far as it is enforced in the human court, where base desires, stopping
6 short of the outward act, are not considered. And, in fact, no matter how much Nature, though driven out with a fork, still returns, a man can nevertheless prevent her causing external acts that are immoral. And the difficulty encountered in conquering a bent of that sort is balanced by the glory and praise which here awaits the victor. But should the mind be goaded with passions such as no reason can hold in check, there is still a way of emptying them out, as it were, without sin.

13. And then the will is strongly bent toward certain acts by frequent repetition of acts of the same sort, from which arises a proclivity which we call habit. The result of habit is that an action is undertaken willingly and lightly, so that the mind seems to be, as it were, dragged toward the object, if present, or most ardently to desire it, if absent. And one should note that there is no habit such that a man cannot with care throw it off again; and also none that can so far pervert the mind, that a man is unequal to the task

of restraining here and now the outward acts, at least, toward which habit is swept. And as it is in a man's power to contract a habit of the kind, no matter how much it facilitates the act, nothing is subtracted from the value of his good deeds, nor is the guilt of his misdeeds any the less. In fact, as a good habit heightens a man's praise, so a bad habit his shame.

14. It also makes a great difference whether there is a calm tranquillity of mind, or whether it is stirred by certain special emotions, which they call passions. With regard to these this must be our opinion: however violent they may be, still by due use of reason a man can be superior to them and check their attack, at least before the ultimate act. Moreover, some of the passions are excited by the appearance of a good, others of an evil, and they spur us on to win some agreeable thing, or to avoid the disagreeable. Consequently it is in keeping with human nature that more favor and indulgence among men should go with the second class of passions, and precisely in proportion to the intolerable violence of the evil which aroused them. It is in fact thought much more tolerable to dispense 7
with a good not very necessary to self-preservation, than to suffer an evil tending to the destruction of our nature.

15. Finally, as there are certain diseases which quite take away the use of reason, permanently, or for a time, so among many nations it is a common thing for men actually to invite a kind of malady which soon passes away, and greatly disturbs the use of reason. By which hint I mean intoxication, arising from some beverages and some kinds of smoke. It creates in the blood and spirit a violent commotion, and gives men a proclivity to lust in particular, to anger, rashness, and excessive mirth, so that many seem to be carried out of themselves by intoxication, and to have put on an entirely different nature, as compared with their sober appearance. While it does not, however, always take away the complete use of reason, as being self-invited, it is apt to win odium, rather than favor, for the acts done in that condition.

16. Again, human actions are called voluntary, since they proceed from the will and are guided by it. In the same way whatever actions are knowingly undertaken in opposition to the will, are called involuntary, in the narrower sense of the term. For in its wider sense it also includes acts committed through ignorance. But by involuntary I here mean the same thing as compelled, that is, when a man is forced by a stronger principle from without to surrender the use of his limbs, in such wise as to show his aversion and dissent by signs, and especially by bodily resistance. Also, but less exactly, we speak of the involuntary, when under the stress of necessity one chooses as the lesser evil and undertakes a thing to which formerly,

when unconstrained by necessity, one was absolutely averse. Such actions they commonly call mixed. With the voluntary they have this in common, that the will does in the emergency choose the apparently lesser evil. With the involuntary they agree to a certain extent in their effect, in that they are either not laid at all to the charge of the doer, or less severely than are the voluntary actions.

8 17. But human actions proceeding from and guided by intellect and will possess this particular attribute, that they can be imputed to a man, that is, that the man can rightly be regarded as their author, and held to the rendering of an account of them, and that the consequences which flow from them fall back upon himself. For there is no more intimate reason why an action can be imputed to a man, than because, directly or indirectly, it proceeded from him, knowing and willing it; or because it was in his power, whether the thing should be done or not. Hence in the moral sciences which concern the human tribunal, it is accounted a fundamental axiom, that a man can be called to account for those actions, the performance or omission of which was in his power; or,—and this amounts to the same thing,—that any action which can be directed by a man, and brought about or not at his discretion, can be laid at his own door. So too, on the other hand, no one can be reckoned the author of an action which neither in itself nor in its cause was within his power.

18. Out of these premises we shall form a number of particular propositions, from which it will be established what can be imputed to each man, that is, of what action and result each one can be regarded as the author. First, the actions which another commits, as also the workings of any other causes, and any effects, can only be imputed to a man in so far as he has the power and the duty to control them. Nothing, in fact, is more common among men than for one man to be intrusted with the direction of another's actions. In this case, then, if the other should commit any action in regard to which the first omitted to do what was in his power, that action will be imputed not only to him who immediately committed it, but also to him who neglected any part of the direction which was his duty and within his power. This, however, has its limits and bounds, so that the possible in the case is to be understood with a certain reservation and in a moral sense. By no subjection of one man to another is the freedom of the subject so far extinguished that he cannot resist the direction of the other, and have different aims, and, on the other hand, human life is not so constituted that a man continually attached to one man should be
9 able to observe his every movement. It follows then that, if one has done everything which the nature of the direction laid upon

him suggests, when, nevertheless, something has been done by the other, it will be imputed to the doer alone. Thus since men have assumed the ownership of animals, whatever has been done by them to the detriment of another will be laid to the charge of the owner, if, indeed, he has omitted any due care and watchfulness. Thus also any evils which befall another can be imputed to him who, having the power and duty, did not remove their cause and occasion. So, since men have it in their power to promote or suspend many natural operations, any advantage or loss, which they may have occasioned, will be imputed to them in proportion to their contributory pains or neglect. Also in some extraordinary cases a man is responsible for such events as are at other times beyond human control, since the Deity has in a special manner brought them about with reference to a certain man. These and similar cases aside, it is enough if a man can render account of his own actions.

19. Secondly, whatever qualities are found, or not found, in a man, when their presence or absence was not within his power, cannot be imputed to the man himself, except in so far as he failed by industry to make good his natural defect, or to second his native powers. Thus, since no one could insure himself mental penetration and bodily strength, nothing will be chargeable to any one on that account, save in so far as he availed himself of training, or failed to do so. Thus it is not the rustic, but the man of the city and the court, to whom uncouth manners are made a reproach. Hence fault-finding for qualities whose cause was not in our power is to be accounted very absurd, for example, shortness of stature, imperfection of form, and the like.

20. Thirdly, things done through invincible ignorance cannot be laid to one's charge. For we cannot direct an action when the light of intellect does not shine before us; and also we are presupposing that the man was unable to gain such a light, and was not to blame for this inability. Indeed, in common life ability [*τό posse*] is understood, in a moral sense, to be that degree of capacity, shrewdness, and caution, which is usually judged sufficient, and was based 10
upon plausible reasons.

21. Fourthly, ignorance, as also error, in regard to laws and the duty imposed upon each man does not release one from responsibility. For he who imposes laws and duty upon a man is accustomed, and is bound, to bring these to the notice of the subject. And laws and rules of duty are usually adapted, and must be so, to the capacity of the subject; and to learn and remember them must be a care to everyone. Hence he who is the cause of others' ignorance will be held answerable for the acts also which flow from that ignorance.

22. Fifthly, if a man lacks opportunity to act without involving himself in a fault, his failure to act will not be laid to his account. And opportunity seems to include these four points: (1) that the object of the act be at hand, (2) that there be a convenient place, where we cannot be hindered by others, or suffer some harm, (3) that there be a favorable time, when we do not have more necessary business to transact,—a time which is favorable for others also who concur in the act, (4) finally that we have the natural powers for the act. Without these circumstances the action could not take place, and hence it would be absurd to hold a man accountable, when the opportunity to act was lacking. Thus a physician cannot be accused of indolence, if no one is ill; and a man who is himself in want is not permitted to be liberal. So also he cannot be charged with hiding his talent, who has been refused the position for which he made a proper request. And "unto whomsoever much is given, of him shall be much required."[1] Thus we cannot suck and blow at the same time.

23. Sixthly, it cannot be laid to a man's account either, that he did not do things which exceed his powers, and cannot be prevented by these, or brought about by them. Hence the common saying that there is no obligation for the impossible. We must, however, add the proviso that a man has not diminished or lost his power to perform by his own fault. For such a man can be treated just as if he still retained his powers; for otherwise there would be an easy way to evade any rather troublesome obligation, by electing to destroy the power to perform.

24. Seventhly, there is also no responsibility for what one
11 suffers or does under compulsion. For to avert or escape such things is understood to be beyond the man's powers. Now compulsion is used in two senses: first, when a stronger by force employs our limbs to do or suffer something; secondly, if a more powerful person threatens some great harm at once, and has the ability to carry it out directly, unless we are ready to bestir ourselves to do something, or to refrain from action. For in that case, unless we are expressly obliged to buy off at our own cost the injury we were to inflict upon a third party, the man who imposes upon us that necessity will be considered the author of the crime; but the deed can no more be imputed to us than bloodshed to the sword or the ax.

25. Eighthly, those who are deprived of the use of their reason are not accountable for their actions. For they are unable to distinguish clearly what is being done, or to compare it with a standard. Here belong the acts of infants, before the reason begins to show itself at all clearly. As for the fact that they are scolded or whipped

[1] [St. Luke, xii, 48.]

for certain acts, it is not done with the idea that they have strictly speaking deserved punishment in the human court; but it is by way of mere correction and discipline, that they may not make trouble for others by such actions, or may not form a bad habit. So, too, the acts of the insane, the unbalanced and dotards, if the disease has come without their fault, are not regarded as human actions.

26. Ninthly, and finally, one is not accountable for what he imagines he does in sleep, except in so far as by dwelling with pleasure upon the thought of such things by day he has deeply impressed their images upon his mind. And yet these too are very rarely considered in a human court. For in general imagination in sleep is like a boat adrift without a pilot, so that it is not in a man's power to determine what kind of images fancy is to produce.

27. With regard to responsibility for the acts of another, we should observe more closely that sometimes, to be sure, it happens that an action is not laid at all to the charge of him who directly committed it, but to another person who used him as a mere instrument. More commonly, however, an act is charged both to him who committed it, and to him who concurred by some act or omission. 12
This happens especially in three ways: either the second party is accounted the principal cause of the act and he who committed it secondary; or they both walk *pari passu;* or the second party is the secondary cause, and he who committed it the principal. To the first class belong those who urged another to anything by their influence; those who gave the necessary consent, without which the other could not have acted; those who were able and bound to prevent, and did not do so. To the second class belong those who charge another, or hire him, to commit crime; those who help, harbor, or defend; those who, being able and bound to lend aid to the injured party, failed to do so. To the third class are referred those who give particular advice; those who applaud and approve before the deed; those who by their example inflame others to wrong-doing, and similar persons.

CHAPTER II

On the Norm of Human Actions, or Law in General

1. Because human actions depend upon the will, but the wills of individuals are not always consistent, and those of different men generally tend toward different things, therefore, in order to establish order and seemliness among the human race, it was necessary that some norm should come into being, to which actions might be conformed. For otherwise, if with such freedom of the will, and such diversity of inclinations and tastes, each should do whatever came into his head, without reference to a fixed norm, nothing but the greatest confusion could arise among men.

2. That norm is called law, that is, a decree by which a superior obliges a subject to conform his acts to his own prescription.

13 3. That this definition may be better understood, we must develop the meaning of obligation, whence it arises, who can undertake an obligation, and who impose it upon another. Obligation, then, is commonly defined as a legal bond, by whch we are of necessity bound to perform something. That is, a kind of bridle is thereby put upon our freedom, so that, though in actual fact the will can have a different aim, still it finds itself imbued with an inward sentiment due to the obligation, with the result that, if the action performed is not in conformity with the prescribed norm, the will is forced to acknowledge that it has not done what is right. And so if any ill should befall a man on that account, he would judge that it befalls him not undeservedly; since by following the norm, as was proper, he might have avoided it.

4. For the fact that man is fitted to undertake an obligation there are two reasons: one, because he has a will which can turn in different directions, and so also conform to the rule; the other, since man is not free from the power of a superior. For where an agent's powers have been bound by nature to a uniform mode of action, there we look in vain for free action; and it is vain to prescribe a rule for a man who cannot understand it nor conform to the same. Again, assuming that a man does not recognize a superior, there is for that reason no one who can rightfully impose a necessity upon him. And if he be ever so strict in observing a certain method of action, and consistently abstain from certain acts, still he is under-

stood to do this not from any obligation, but from his own good pleasure. It follows then that he is capable of an obligation who not only has a superior, but also can recognize a prescribed rule, and further has a will flexible in different directions, but conscious of the fact that, when the rule has been prescribed by a superior, it does wrong to depart from the same. Such is evidently the nature with which man is endowed.

5. Obligation is properly introduced into the mind of a man by a superior, that is, a person who has not only the power to bring some harm at once upon those who resist, but also just grounds for his claim that the freedom of our will should be limited at 14
his discretion. For when these conditions are found in anyone, he has only to intimate his wish, and there must arise in men's minds a fear that is tempered with respect, the former in view of his power, the latter in consideration of the reasons, which, were there no fear, must still induce one to embrace his will. For whoever is unable to assign any other reason why he wishes to impose an obligation upon me against my will, except mere power, can indeed frighten me into thinking it better for a time to obey him, to avoid a greater evil; but, once that fear is removed, nothing further remains to prevent my acting according to my will rather than his. Conversely, if he has indeed the reasons which make it my duty to obey him, but lacks the power of inflicting any harm upon me, I may with impunity neglect his commands, unless a more powerful person comes to assert the authority upon which I have trampled. Now the reasons why one may rightly demand that another obey him are: in case some conspicuous benefits have come to the latter from the former; or if it be proved that he wishes the other well, and is also better able than the man himself to provide for him, and at the same time actually claims control over the other; and finally if a man has willingly subjected himself to another and agreed to his control.

6. But that the law may exert its power in the minds of those for whom it is made, knowledge both of the lawgiver and of the law itself is required. For no man will be able to yield obedience, if he knows neither whom he ought to obey, nor to what he is obligated. And as for the lawgiver, knowledge of him is very easy. For the natural laws, as the light of reason assures us, have the same author as the universe. And the citizen cannot fail to know who has authority over him. How the natural laws are made known, will be explained presently. Civil laws come to the knowledge of subjects by public and explicit promulgation. In this two things must be clear: that the law has as its author him who has the highest authority in the state; and also what is the meaning of the law. The former point is established, if the sovereign shall promulgate the

15 law by his own lips, or sign them with his own hand, or if this be done by his ministers. The authority of the latter it is idle to question, if it is clear that this function is connected with the office which they fill in the state, and that they are regularly employed for the same purpose; further if the laws in question are for the guidance of the courts, and if they contain nothing derogatory to the sovereign authority. As for the meaning of the law, that this may be rightly understood, it is incumbent upon those who promulgate them to use the utmost clearness. Should any obscurity be found in the laws, an interpretation must be sought from the lawgiver, or from those who are publicly ordained to render justice in accordance with the laws.

7. Every perfect law has two parts: one defining what is to be done, or not done; the other indicating what punishment is in store for him who neglects what is enjoined and does what is forbidden. For on account of the depravity of human nature, prone as it is to the forbidden, it is superfluous to say "Do this!" if there is no punishment in store for the non-doer. And it is equally absurd to say "You will pay the penalty," if the reason which merits punishment has not preceded. Accordingly all the force of a law consists in the declaration of what our superior wishes us to do or not do, and of the penalty which has been fixed for transgressors of the law. But the power to oblige, that is, to impose an inward necessity, and the power to force or compel by penalties to observe the law, resides exclusively in the lawgiver, and in him to whom has been committed the maintenance and execution of the laws.

8. Whatever is enjoined upon a man by the laws ought not only to be within his powers, for whom they are made, but should also bring some advantage either to the man himself or to others. For as it would be absurd and cruel to attempt under threat of a penalty to exact from a man what is and has always been beyond his powers, so it is idle to constrain the natural freedom of the will, if no advantage for anybody be derived therefrom.

9. Moreover, although regularly a law embraces all the lawgiver's subjects to whom the content of the law applies, and whom the lawgiver did not from the beginning wish exempt, it nevertheless sometimes happens that a man is expressly released from the
16 obligation of a law. And this is called dispensation. But he only can dispense to whom belongs the power of enacting and abrogating a law; and pains too must be taken that the authority of the laws be not undermined by promiscuous dispensation granted without the weightiest reasons, and thus occasion be given for jealousy and indignation among the subjects.

10. Very different from dispensation, however, is equity, a cor-

rection of a defect in the law due to its universality, or a skillful interpretation of the law, showing by the natural reason that a particular case is not included under the general law, since otherwise some absurdity would result. For because it is impossible either to foresee or state all cases on account of their infinite variety, the judges, whose task it is to apply general enactments of the laws to particular cases, are bound to except from the law the kind of cases which the lawgiver would himself have excepted, were he present, or had he foreseen such instances.

11. Again, from their relation to the moral standard and their agreement with it human actions gain certain qualifying terms. As for the actions in regard to which the law ordains nothing in either direction, they are called legitimate or permitted. Sometimes, to be sure, in the civil life, in which not everything can be cut back to the quick, those acts also are called legitimate against which no punishment has been ordained in the human court, though in themselves they are repugnant to natural goodness. Also, actions in agreement with law are called good, if not in harmony therewith, bad. But for an action to be good, it must in every way agree with the law; to be bad, it is enough that it be defective at a single point.

12. Justice, however, is sometimes an attribute of actions, sometimes of persons. When justice is attributed to a person, it is commonly defined as the "constant and perpetual will to render to every man his due."[1] For he who delights in doing just deeds, who is devoted to justice, who in everything endeavors to do what is just, is called a just man. On the other hand the unjust is he who neglects to give every man his due, or thinks the measure must be not that of his 17
duty, but of present advantage. Consequently not a few of the just man's acts may be unjust, and conversely. For the just man acts justly on account of the precept of the law, but unjustly only through weakness, while the unjust acts justly on account of the penalty annexed to the law, and unjustly from an evil character.

13. But when justice is predicated of actions, there is merely a proper application of these to the person. And a just action is one which from deliberate choice, that is, by a knowing and willing agent, is applied to the person to whom it is due. Hence the justice of acts differs from their goodness especially in this, that the latter merely indicates conformity to law, while justice involves in addition a regard for those toward whom the action goes out. For this reason justice is also defined as virtue in relation to another.

14. On the division of justice there is no agreement. The generally received division is into universal and particular. We speak of the former, when any duty whatever is practiced toward others,

[1] [ULPIAN, *Dig.* 1, 10; *Inst.* 1, 1, pr.]

even that which could not be exacted by force or by suit at law; of the latter, when a man receives just what he could by rights demand. And this is again divided into distributive justice and commutative justice. The former rests upon a compact entered into between a society and its members concerning the *pro rata* sharing of profit and loss. The latter rests upon a bilateral contract in regard especially to things and acts connected with trade.

15. Having learned what justice is, it is easy to conclude what injustice is. But here one must observe that an unjust act, undertaken after premeditation, and violating what is by perfect right due another, or what he possessed by the same right,—no matter whence obtained,—that act is properly called an injury. And this happens in three ways: if one is refused a thing which he could by his own right demand (not if something was due him out of mere humanity, or some such virtue); or if that is taken away from him which he rightly held, by a title valid against the aggressor; or if we inflict upon
18 another some harm which we had not the right to inflict. For an injury, moreover, premeditation is required, and malice on the part of the doer. Failing this, harming another is called an accident or a fault, more or less serious, according to the seriousness of the thoughtlessness and neglect, in consequence of which the encounter occurred.

16. With respect to its author, the law is divided into divine and human, the one enacted by God, the other by men. But if law be considered according as it has a necessary and universal adaptation to men or not, it is divided into the natural and the positive. The former is so adapted to the rational and social nature of man, that an honorable and peaceful society cannot exist for mankind without it. Consequently it can be investigated and learned as a whole, by the light of man's inborn reason and a consideration of human nature. The latter kind of justice by no means flows from the common condition of human nature, but proceeds from the decision of the lawgiver alone. And yet it ought not to lack its own reason, and the utility which it effects for certain men or a particular society. But while the divine law is now natural and now positive, human law is, in the strict sense, altogether positive.

CHAPTER III

On Natural Law

1. What is the character of the natural law, what its necessity, and of what precepts it consists in the present state of mankind, are most clearly seen, after one has thoroughly examined the nature and disposition of man. For, just as for an accurate knowledge of civil laws, it is very important to have a clear understanding of the condition of the state, and of the habits and interests of its citizens, so if we have examined the common disposition of men and their condition, it will be readily apparent upon what laws their welfare depends.

2. Now man shares with all the animals that have consciousness the fact that he holds nothing dearer than himself, and is eager in every way to preserve himself; that he strives to gain what seem to him good things, and to reject the evil. This feeling is regularly so strong that all the others give way to it. And one cannot but resent it, if any man make an attack upon one's life, so much so that, even after the threatened danger has been averted, hatred usually still remains, and a desire for vengeance. 19

3. But in one respect man seems to be in a worse state even than the brutes,—that scarcely any other animal is attended from birth by such weakness. Hence it would be a miracle, if anyone reached mature years, if he have not the aid of other men, since, as it is, among all the helps which have been invented for human needs, careful training for a number of years is required, to enable a man to gain his food and clothing by his own efforts. Let us imagine a man brought to maturity without any care and training bestowed upon him by others, having no knowledge except what sprang up of itself in his own mind, and in a desert, deprived of all help and society of other men. Certainly a more miserable animal it will be hard to find. Speechless and naked, he has nothing left him but to pluck herbs and roots, or gather wild fruits, to slake his thirst from spring or river, or the first marsh he encountered, to seek shelter in a cave from the violence of the weather, or to cover his body somehow with moss or grass, to pass his time most tediously in idleness, to shudder at any noise or the encounter with another creature, finally to perish by hunger or cold or some wild beast. On the other hand, whatever advantages now attend human life have

flowed entirely from the mutual help of men. It follows that, after God, there is nothing in this world from which greater advantage can come to man than from man himself.

4. Yet this animal, though so useful to his kind, suffers from
20 not a few faults, and is endowed with no less power to injure; which facts make contact with him rather uncertain, and call for great caution, that one may not receive evil from him instead of good. First of all, there is generally a greater tendency to injure found in man than in any of the brutes. For the brutes are usually excited by the desire for food and for love, both of which, however, they can themselves easily satisfy. But having stilled that craving, they are not readily roused to anger or to injure people, unless someone provokes them. But man is an animal at no time disinclined to lust, and by its goad he is excited much more frequently than would seem necessary for the conservation of the race. And his belly desires not merely to be satisfied, but also to be tickled, and often craves more than nature is able to digest. That the brutes should not need clothing nature has provided. But man delights to clothe himself, not for necessity only, but also for display. Many more passions and desires unknown to the brutes are found in man, as the desire to have superfluities, avarice, the love of glory and eminence, envy, emulation, and rivalry of wits. Witness the fact that most wars, in which men clash with men, are waged for reasons unknown to the brutes. And all these things can, and usually do, incite men to desire to injure one another. Then too there is in many a notable insolence and passion for insulting their fellows, at which the rest, modest though they be by nature, cannot fail to take offense, and gird themselves to resist, from the desire to maintain and defend themselves and their freedom. At times also men are driven to mutual injury by want, and the fact that their present resources are insufficient for their desires or their need.

5. Moreover men have in them great power for the infliction of mutual injuries. For though not formidable because of teeth or claws or horns, as are many of the brutes, still manual dexterity can prove a most effective means of injury; and shrewdness gives a man the opportunity to attack by cunning and in ambush, where the enemy
21 cannot be reached by open force. Hence it is very easy for man to inflict upon man the worst of natural evils, namely death.

6. Finally, we must also consider in mankind such a remarkable variety of gifts as is not observed in single species of animals, which, in fact, generally have like inclinations, and are led by the same passion and desire. But among men there are as many emotions as there are heads, and each has his own idea of the attractive. Nor are all stirred by a single and uniform desire, but by one that is

manifold and variously intermixed. Even one and the same man often appears unlike himself, and if he has eagerly sought a thing at one time, at another he is very averse to it. And there is no less variety in the tastes and habits, the inclinations to exert mental powers,—a variety which we see now in the almost countless modes of life. That men may not thus be brought into collision, there is need of careful regulation and control.

7. Thus then man is indeed an animal most bent upon self-preservation, helpless in himself, unable to save himself without the aid of his fellows, highly adapted to promote mutual interests; but on the other hand no less malicious, insolent, and easily provoked, also as able as he is prone to inflict injury upon another. Whence it follows that, in order to be safe, he must be sociable, that is, must be united with men like himself, and so conduct himself toward them that they may have no good cause to injure him, but rather may be ready to maintain and promote his interests.

8. The laws then of this sociability, or those which teach how a man should conduct himself, to become a good member of human society, are called natural laws.

9. So much settled, it is clear that the fundamental natural law is this: that every man must cherish and maintain sociability, so far as in him lies. From this it follows that, as he who wishes an end, wishes also the means, without which the end cannot be obtained, all things which necessarily and universally make for that sociability are understood to be ordained by natural law, and all that confuse or destroy it forbidden. The remaining precepts are mere corollaries, so to speak, under this general law, and the natural 22
light given to mankind declares that they are evident.

10. Again, although those precepts have manifest utility, still, if they are to have the force of law, it is necessary to presuppose that God exists, and by His providence rules all things; also that He has enjoined upon the human race that they observe those dictates of the reason, as laws promulgated by Himself by means of our natural light. For otherwise they might, to be sure, be observed perhaps, in view of their utility, like the prescriptions of physicians for the regimen of health, but not as laws; since these of necessity presuppose a superior, and in fact one who has actually undertaken the direction of another.

11. But that God is the author of the natural law, is proved by the natural reason, if only we limit ourselves strictly to the present condition of humanity, disregarding the question whether his primitive condition was different from the present, or whence that change has come about. The nature of man is so constituted that the race cannot be preserved without the social life, and man's mind is found

to be capable of all the notions which serve that end. And it is in fact clear, not only that the human race owes its origin, as do the other creatures, to God, but also that, whatever be its present state, God includes the race in the government of His providence. It follows from these arguments that God wills that man use for the conservation of his own nature those special powers which he knows are peculiarly his own, as compared with the brutes, and thus that man's life be distinguished from the lawless life of the brutes. And as this cannot be secured except by observing the natural law, we understand too that man has been obliged by God to keep the same, as a means not devised by will of man, and changeable at their discretion, but expressly ordained by God Himself, in order to insure this end. For whoever binds a man to an end, is considered to have bound him also to employ the means necessary to that end. And besides, we have evidence that the social life has been enjoined upon men by
23 God's authority, in the fact that in no other creature do we find the religious sentiment or fear of the Deity,—a feeling which seems inconceivable in a lawless animal. Hence in the minds of men not entirely corrupt a very delicate sense is born, which convinces them that by sin against the natural law they offend Him who holds sway over the minds of men, and is to be feared even when the fear of men does not impend.

12. The common saying that that law is known by nature, should not be understood, it seems, as though actual and distinct propositions concerning things to be done or to be avoided were inherent in men's minds at the hour of their birth. But it means in part that the law can be investigated by the light of reason, in part that at least the common and important provisions of the natural law are so plain and clear that they at once find assent, and grow up in our minds, so that they can never again be destroyed, no matter how the impious man, in order to still the twinges of conscience, may endeavor to blot out the consciousness of those precepts. For this reason in Scripture too the law is said to be "written in the hearts" of men.[1] Hence, since we are imbued from childhood with a consciousness of those maxims, in accordance with our social training, and cannot remember the time when we first imbibed them, we think of this knowledge exactly as if we had had it already at birth. Everyone has the same experience with his mother tongue.

13. Of the duties incumbent upon man in accordance with natural law the most convenient division seems to be according to the objects in regard to which they are to be practiced. From this standpoint they are classified under three main heads: the first of which instructs us how, according to the dictate of sound reason alone,

[1] [*Romans*, ii, 15.]

a man should conduct himself toward God, the second, how toward himself, the third, how toward other men. Although those precepts of natural law which concern other men may be derived primarily and directly from sociability, which we have laid down as a foundation, indirectly also the duties of man to God as creator can be derived from the same, since the ultimate confirmation of duties toward other men comes from religion and fear of the Deity, so 24
that man would not be sociable either, if not imbued with religion; and since reason alone cannot go further in religion than in so far as the latter subserves the promotion of peace and sociability in this life. For, in so far as religion promotes the salvation of souls, it proceeds from a special divine revelation. But duties of man to himself spring from religion and sociability conjointly. For the reason why he cannot determine certain acts concerning himself in accordance with his own free will, is partly that he may be a fit worshiper of the Deity, and partly that he may be a good and useful member of human society.

CHAPTER IV

On the Duty of Man toward God, or Natural Religion

1. The duty of man toward God, so far as it can be investigated by the natural reason, reduces itself to two heads: that we have right views of God, and secondly that we order our acts in conformity with His will. Hence natural religion consists of propositions both theoretical and practical.

2. Among the views which every man must hold of God, he should first of all be persuaded that He exists, that is, that there really is some highest and first Being, upon whom this universe depends. The philosophers have most clearly demonstrated this by the subordination of causes, which demand their ultimate resting in a First; also by motion and by contemplation of the machinery of the universe, and similar arguments. And if any man shall deny that he can understand these, he does not on that account find excuse for his atheism. For as the whole human race has been in perpetual possession of that belief, it would be necessary, if anyone wished to attack it, not only to destroy utterly all the arguments by which the existence of God is proved, but also to produce more plausible reasons for his assertion. Likewise since it has been hitherto believed that
25 the welfare of the human race depends upon that conviction, the man would have further to show that the race is better served by atheism than by retaining a sane cult of the Deity. This being impossible, the impiety of those who venture to attack that belief in any way is detestable and to be most severely punished.

3. The second truth is that God is founder of this universe. For since reason makes it clear that all those things did not exist of themselves, it must be that they have some first cause. And this is just what we call God. Consequently they are deceived who from time to time noisily talk of Nature as the ultimate cause of all things and all effects. For if by that term we understand that power of effecting and acting which is seen in things, that in itself certainly is an argument for its author, namely God: so impossible is it for Nature's power to enable us to deny God. If however by Nature is meant the ultimate cause of everything, it is a kind of profane fastidiousness to avoid the plain and received term, God. They too are in error who believe that God is some one of the things which

impinge upon our senses, and especially the stars. For their very substance declares that all of these are no first thing, but sprung from another. Not less unworthy is their view of God who call Him the soul of the world. For whatever the soul of the world may be, it denotes a part of the world, and how could part of a thing have been its cause, that is, an antecedent? But if by soul of the world we mean that first invisible being upon which depends the force and motion of all things, then in place of a clear term we are substituting one that is obscure and figurative. Hence also it is evident that the world is not eternal; for that is incompatible with the nature of that which has a cause. And he who asserts the eternity of the world, denies it any possible cause, and thus denies God Himself.

4. The third maxim is that God rules over the whole world, and over the human race. This is perfectly clear from the wonderful and constant order seen in this universe. But so far as the moral 26
effect is concerned, it is immaterial whether one denies that God exists, or that he governs the affairs of men, since either view completely destroys all religion. For it is vain to fear or venerate him who, though in himself preeminent, is not touched by any care for us, and will not, or cannot, bring us any good or ill.

5. The fourth principle is that no attribute involving any imperfection applies to God. For as He is the cause and origin of all things, it would be absurd for some creature of His to have the power to conceive of a perfection which God lacked. More than that, His perfection being infinitely beyond the capacity of so petty a creature, it will be proper to express it in negative rather than in positive terms. Hence we must by no means apply to God those terms which connote something finite or determinate, since the finite can always be matched by a greater. And every determination and figure involves boundaries and a delimitation. In fact we are not to say that He is distinctly and plainly comprehended or conceived by our imagination, or any other faculty of our soul, since whatever we are able to conceive distinctly and fully, is finite. Nor do we hold in mind a complete concept of God, because we call Him infinite, inasmuch as infinite does not properly denote anything in the thing itself, but powerlessness in our mind, just as if we should say that we do not understand the magnitude of His being. Hence one cannot say either that God has parts, or is a whole, since these are the attributes of the finite; nor that He is contained in some place, for this implies bounds and limits to His greatness; nor that He moves, or is at rest, for both of these suppose being in a place. So also we cannot properly attribute to God anything which indicates a pain or a passion, for instance anger, repentance, pity. I

say *properly,* for where we read of such attributes of God, it stands for the effect, in terms of man's feelings, not for the passion itself. The same is true of all that indicates the need and absence of some good thing, for example, craving, hope, concupiscence, sensual love. For these involve want, and so imperfection, since we could not under-
27 stand craving, hoping, and desiring, except in relation to things one needs or lacks. So too when one ascribes to God intellect, will, knowledge, and acts of sense, as seeing or hearing, these are to be understood as on a far higher plane than are the same things in ourselves. For will is the appetite of the reason; but an appetite presupposes absence and need of the corresponding thing. And intellect and sensation in man involve passion, impressed by objects upon the organs of the body and the powers of the soul; which is a proof of a power dependent upon another, and hence not the most perfect. Finally this also is inconsistent with divine perfection, to say that there are more gods than one. For aside from the fact that the marvelous harmony of the world proves that it has but a single ruler, God would also be limited, if there were several of equal power, not dependent upon Himself. Just so the existence of a number of infinites would involve a contradiction. Such being the case, it is most in harmony with reason, in expressing as best we may the attributes of God, to use words that are either negative, as infinite, incomprehensible, immense, eternal, viz., lacking end and beginning; or superlative, as best, greatest, most powerful, wisest, etc.; or else indefinite, as good, just, Creator, King, Lord, etc., with the understanding that we wish not so much to tell distinctly what He is, as to declare our wonder and obedience by some sort of an expression. And this is the sign of a mind that is humble, and honors to the best of its ability.

6. The practical propositions of natural religion have to do partly with the internal and partly with the external cult of God. The inward cult of God consists in honoring Him. And honor is the idea one has of another's power and goodness combined. On considering God's power and goodness, man must naturally conceive the utmost possible veneration of Him. Whence flows the obligation to love Him, as the author and giver of every good; to hope in Him, upon whom we believe that all our happiness, for the future too, depends; to rest content with His will, who in His goodness does all things
28 well, and gives us what is most expedient for us; to fear Him, as most powerful, to offend whom is to incur the greatest punishment; finally in all things most humbly to obey Him, as Creator, Lord, and best and greatest Ruler.

7. The external cult of God consists especially in these things: returning thanks to God for so many blessings received from

Him; expressing His will in one's acts, so far as possible, in other words, obeying Him; admiring and celebrating His greatness; offering prayers to Him, to obtain blessings and avert evils, since prayers are signs of hope, and hope the recognition of divine goodness and power. Further, swearing, if the occasion arises, by God alone, and observing one's oath most religiously, since this is required by God's omniscience and power. Also speaking of God with reserve, since that is a sign of fear, and fear a confession of power. It follows that we must not use the name of God rashly and in vain, both of which are unreserved; and that we must not swear where there is no need, as that is to no purpose; also that we should not argue curiously and impertinently in regard to the nature and government of God, for the only inference is that we wish to measure God by the standard of our reason. Another [duty of the external cult is] taking care that whatever is rendered to God be the best of its kind, and fitted to express the honor paid Him; another, worshiping God not only in private, but also openly and publicly in the sight of men. For concealing an act is as it were blushing to do it. On the other hand the public cult, besides testifying to our devotion, encourages others by our example. Finally, one should use every effort to keep the natural laws. For as holding God's authority in low esteem is worse than any insult, so conversely obedience is more acceptable than any sacrifice.

8. So much is indeed certain, that the effect of this natural religion, precisely considered, and with regard to man's present condition, is limited to the sphere of this life, and is of no avail to secure eternal salvation. For human reason, if left to itself, does not know that the depravity which is seen in man's faculties and inclinations came through human sin, and deserves the anger of 29
God and eternal destruction. Hence too the necessity of a Saviour is hidden from the reason, as also His service and merit, likewise the promises of God, given to the human race, and whatever else depends upon these,—the things through which alone eternal salvation is gained for men, as is known from the Scriptures.

9. Moreover it will be worth while to estimate a little more clearly the advantage which religion contributes to human life, that we may establish the fact that it is in truth the ultimate and strongest bond of human society. For in the natural liberty, if you take away the fear of the Deity, as soon as a man has confidence in his own powers, he will at his own caprice undertake anything against the weaker, and will consider honor, shame, good faith, as empty words, and will not be forced to do right except by a sense of his own weakness. Again, remove religion, and the internal stability of states would always be uncertain, and fear of temporal punishment,

a promise given to superiors, the glory to be gained by keeping the same, gratitude because men have been rescued from the miseries of the natural state by the help of the government,—none of these would suffice to hold citizens to their duty. For to that situation we could in truth apply the saying: "He who knows how to die, can never be forced."[1] For those who fear not God can fear nothing more than death. If one should have the hardihood to despise the latter, he could attempt anything against the rulers. And a reason for such a desire would scarcely be lacking; for example, in order to avoid the inconveniences which seem to fall upon one from the rule of another; or to gain for one's self those advantages which attend the possessor of powers; especially since one may easily think he is right in doing so, either because the man now in power seems to misgovern the state, or because the other hopes he will himself rule far better. And then an opportunity for such attempts might easily present itself, when the king fails to hedge his life about with sufficient caution (and in such a situation "who is to guard the guards themselves?"[2]); or when many conspire, or when in the midst of a foreign war enemies are made accomplices. Furthermore, citizens would be very prone to injure each other. For, as in the civil court judgment is rendered according to acts and things proved, all crimes and outrages from which profit is likely to be derived, would be regarded as cleverness, to be viewed with complaisance, if they could be done in secret and without witnesses. Also no one would do the works of pity or of friendship, except with the assurance of fame or emolument. Another consequence would be that, so long as no one could place any firm confidence in the integrity of another, were the divine punishments removed, individuals would live a life of perpetual anxiety and suspicion, fearing to be deceived or injured by others. Moreover rulers as well as subjects would be little inclined to do noble and glorious acts. For the rulers, fettered by no bonds of conscience, would treat all offices and Justice herself as venal, and seek in all things their personal advantage, involving the oppression of the citizens. They would also fear a rebellion on the part of the latter, and would accordingly understand their own safety to depend entirely upon weakening them as far as possible. Conversely, the citizens, fearing oppression from their rulers, would be always casting about for an opportunity to rebel, and yet would be no less mutually distrustful and fearful of each other. Even husbands and wives, if a trifling quarrel occurred, would mutually suspect that they were to be killed by poison, or some other secret method. An equal danger from one's household would impend. For since, without religion, there would also be no conscience, it

[1] [Cf. SENECA, *Hercules Furens*, 426.]

[2] [JUVENAL, VI, 347.]

would be difficult to detect such crimes, as these are usually disclosed through a restless conscience, and the terror which is revealed in external signs. Hence it is clear how much it is to the advantage of the human race to block all the ways of atheism, that it may not grow strong; also how great madness pursues those who assert that it is of service in winning a reputation for civic wisdom, if they appear inclined to impiety.

31

CHAPTER V

On the Duty of Man toward Himself

1. Although a deeply implanted self-love constrains a man to exercise anxious care of self, and to take thought in every way for his own interests, so that it would seem superfluous to invent any obligation in this respect, still in another way man is obliged in any case to observe certain things concerning himself. For man was not born for himself alone, but equipped with such remarkable endowments by the Creator, that he may glorify Him, and become a fit member of human society. Consequently he is bound so to order himself that he do not suffer the Creator's gifts to perish from neglect, and that he contribute his due share to human society. Thus, although lack of education is a reproach and a loss chiefly to one's self, the master does well to chastise his pupil, if he neglects to learn arts of which he was capable.

2. Again, man consists of two parts, soul and body, of which the one performs the function of a ruler, the other that of a servant or instrument, so that we use the authority of the mind, the servitude of the body. Hence both must indeed be cared for, but especially the former. And the mind must first of all be molded fitly to endure the social life, and imbued with a sense and a love of duty and honor. Then, in accordance with the capacity and station of the individual, something more must be learned, that a man may not be a useless cumberer of the ground, of no profit to himself, an annoyance to others. Moreover, one must in due time choose an honorable calling in life, according to the prompting of one's bent, or as determined by bodily and mental ability, birth, fortune, parental authority, command of the civil authorities, opportunity, or necessity.

3. Furthermore, since the mind is upheld by the body, the powers of the latter must therefore be strengthened and conserved by suitable food and labors, and not injured by intemperance in
32 eating and drinking, untimely and unnecessary labor, or any other means. Hence one must avoid gluttony, drunkenness, excess in love, and the like. And since disordered and violent passions are not only an incentive to disturb society, but also greatly injure the man himself, one must consequently take pains to restrain one's passions so far as possible. And because many dangers can be repelled, when

one faces them courageously, faintness of heart must be banished, and the mind steeled against the fear of danger.

4. Besides, no man has given himself life, which must rather be accounted a gift of God. Hence it is evident that man by no means has power over his own life, to such an extent that he may at his own discretion cut it off; that, on the contrary, one must wait in any case, until one is called away by Him who stationed us at this post. However, since a man can by his efforts serve others, and is bound to do so, and since a certain kind of work, or a more intense labor, wastes his strength so much as to bring old age and the end of life upon him more promptly than if he had lived a life of ease, it seems in every way justifiable for him to choose what will probably cause a shorter life, in order that he may lavish the benefit of his talent upon others. And again, as frequently the life of many cannot be saved, unless in their behalf others expose themselves to the probable risk of death, the legitimate ruler could enjoin upon a citizen under threat of gravest punishment, not to avoid such a danger by flight. Even on one's own authority it will be permissible to run such risk, if only weightier reasons do not hold us back, and there is hope that it will bring safety to others, and these are worthy to be ransomed at such a price. For it would be foolish vainly to join company with another who is to perish, or, being an extraordinary man, to meet death for a worthless one. For the rest, however, natural law does not appear at all to enjoin that any man prefer the life of any other to his own; but other things being equal, each man is permitted to be his own nearest neighbor. But those who in weariness of the annoyances which commonly attend human life, or in protest against misdeeds which would not have made human society ashamed of them, or in fear of pains which might have been bravely endured, 33
a helpful example for others; or those who with an empty display of loyalty or courage throw away their own lives,—all these are certainly to be thought sinners against the natural law.

5. But frequently self-preservation, which a most sensitive instinct and reason commend to man, seems to conflict with the precept of sociability; namely, when our safety is so endangered by another that either we must suffer death or some serious disadvantage, or else the other must be repelled to his hurt. Therefore we must now explain how far self-defense is to be tempered with restraint. Now self-defense takes place either without injury to him who threatens evil to us (i.e., while we let him see that an attack upon us is a dubious or a fearsome thing), or with injury to him, or even death. The former method is undoubtedly permissible and free from any guilt.

6. As for the second method, however, scruple can arise, since

the human race seems to suffer an equal loss, whether my assailant is killed, or I myself perish; and because I must in any event destroy an image of myself, with whom I am bound to maintain the social life; and, once more, because a violent defense seems to cause a greater disturbance than if I either take to flight, or yield my body submissively to my assailant. But all these arguments do not make this kind of defense at all illegal. For in order that my conduct toward a man be peaceful and friendly, it is required that, in his attitude toward me, he show himself a fit person to receive attentions from me. And since the law of sociability looks to the safety of men, it must be so interpreted as not to destroy the safety of individuals. Hence when another threatens me with death, there is no law which commands me to betray my own safety, that another's malice may attack me with impunity. And whoever in such a case is hurt or killed, has reason to blame his own perversity, which put upon me that necessity. Otherwise, in fact, all the good things which nature
34 or industry has gained for us would have been given to us for nothing, if it were not permitted to offer violence to another who unjustly descends upon them. And the good would be exposed as a ready prey to the bad, if they must never offer them violence. Hence to proscribe utterly forcible self-defense, would be the destruction of the human race.

7. Yet, when injury is threatened, one may not always fly to extreme measures; but the safer must first be tried, for instance, allowing my assailant no access to me, shutting myself up behind walls, warning him to desist from his madness. So too it is the part of prudence, to practice patience in a slight injury, if it can conveniently be done, and to waive some of one's rights, rather than expose one's self to a greater danger by untimely resistance to force, especially when the thing attacked is one which can easily be repaired or made good. But when my safety cannot be secured by this or any such method, it will be permissible to try even extreme measures to that end.

8. But to decide clearly whether a man has kept within the bounds of blameless defense, we have first to consider whether he lives in natural freedom, not subject to any mortal, or on the other hand is responsible to civil authority. In the former condition, when another insists upon inflicting an injury, and is unwilling to be moved to repentance for his base attempt, and to be at peace with me as before, then I shall be able to repel him even with bloodshed; and this not only if he attack my life, but also if he attempt to wound or merely to hurt me, or even to steal, without injury of person. For I have no security that he will not pass from these to greater injuries; and he who shows himself a public enemy

is protected by no further rights from being repelled by me in any way whatever. And life would indeed be unsocial, if it were not permitted to employ extreme measures against him who does not cease to pile up moderate injuries. For on that basis the most inoffensive would be the perpetual mockery of the worst. Furthermore, in this condition of natural liberty, I cannot only repel a danger threatened for the present, but also, that averted, I can pursue the assailant until I have secured myself against him for the future. 35
With regard to this security, we must hold that, if a man after inflicting an injury is moved to spontaneous repentance, asks pardon, and offers compensation for the loss, I am bound to accept his word and be reconciled to him. For to repent of one's own motion and ask pardon, is a strong indication of a change of character. But if a man shows penitence only when his powers of resistance fail, it seems unsafe to trust his bare promise. Therefore from such a man the power to injure must be taken away, or some other bond must be imposed upon him, that henceforth he may not be formidable to us.

9. On the other hand, those who are subjected to civil authority employ a forcible self-defense lawfully only when time and place do not permit of imploring the aid of a magistrate in repelling an injury by which life, or a blessing as valuable as life, or irreparable, is brought into immediate danger. That the danger may be averted, I say, and that only, whereas vengeance and security against future offense shall be left to the discretion of the magistrate.

10. Moreover I may undertake my defense as well against him who threatens my life with malice aforethought, as against him who does so by mistake; for example, if a man assaults me while insane or because he thought me another, with whom he has a quarrel. For it is enough that the other have no right to attack or kill me, and there be on my side no obligation to die in vain.

11. As for the time within which defense is right and proper, this view is to be held: where both parties live in natural liberty, even though they could presume, and ought to presume, that others would observe toward them the duties of natural law, still, on account of the wickedness of human nature, they are bound never to be so free from concern as not to surround themselves with timely and legitimate defenses; for example, by blocking the approach of those who have hostile designs, by getting together arms and men, by winning allies, by closely watching the attempts of the others, and by like measures. But that suspicion, arising from the common wickedness of men, does not suffice to enable me, under pretext of 36
self-defense, actually to surprise my enemy by an armed attack, not even if I see his power growing unduly, especially where he has increased it by harmless industry, or by the favor of fortune, without

oppressing others. More than that, if a man show, besides the ability, also the wish to harm, and this not indeed against me, but against a third party, I cannot for that reason at once venture to attack him on my own account, unless I am bound by an agreement to aid the other, who is being unjustly attacked by a more powerful man. It is expedient to do this all the more promptly, if it be probable that, after overpowering the other, he will turn to me also, and will use his former victory as a means to the next. But where it is quite clear that the other is already planning an attack upon me, even though he has not yet fully revealed his intentions, it will be permitted at once to begin forcible self-defense, and to anticipate him who is preparing mischief, provided there be no hope that, when admonished in a friendly spirit, he may put off his hostile temper; or if such admonition be likely to injure our cause. Hence he is to be regarded as the aggressor, who first conceived the wish to injure, and prepared himself to carry it out. But the excuse of self-defense will be his, who by quickness shall overpower his slower assailant. And for defense it is not required that one receive the first blow, or merely avoid and parry those aimed at him.

12. But in states no such ample room is allowed for self-defense. For here, though one knows that a citizen is preparing to attack him, or else scattering fierce threats, it will by no means be permitted to anticipate him, but he must be reported to their common ruler, and security sought from the same. But when a man is already being attacked by another, and reduced to such straits that there is no opportunity to call for the aid of a magistrate or other citizens, then only will it be permitted to repel violence by employing extreme measures against the assailant; not indeed with the intention of exacting vengeance for the wrong by bloodshed, but because without such bloodshed life cannot be rescued from immediate danger. Moreover, the beginning of the time within which
87 one can kill another in self-defense with impunity, is reckoned from the moment when the aggressor, manifesting his wish to make an attack upon my life, and furnished with the bodily powers and the instruments necessary to injure, is now on the spot from which he can actually injure me, reckoning also that space which is needed, if I prefer to anticipate, rather than to be anticipated. And yet, on account of the mental excitement which such danger occasions, exceeding the limits slightly is disregarded in the human court. Further, the time of blameless self-defense lasts until the aggressor has been repelled, or has of himself retired (whether because he was touched by penitence in the very moment of his crime, or because his attempt met with no success), so that for the present he can no longer injure, and we have the opportunity to withdraw to a place

of safety. For vengeance for an assault, and security for the future, concern the responsibility and power of the civil authority.

13. But although it has been said that it is not right to rush into bloodshed when the danger can be repelled in a more convenient way, still on account of the excitement which imminent danger commonly produces, it is not usual to be over-particular. For one in the flutter of such danger may not be so careful in surveying all the ways of escape, as the man who is considering the subject with a mind unperturbed. And then, just as it is rash to venture down from a safe place, to meet the challenger, so, if he attacks me in an exposed situation, I am not expressly obliged to flee, except perhaps when there is near by a refuge, to which I may betake myself without danger. And I am not always obliged to retreat backwards. For then one must expose his back, and the danger of a fall is both before and behind; and once you have been forced from your position, it is difficult to recover it again. Moreover, one is not excluded from the privilege of self-defense by the fact that he has gone abroad to attend to his business, whereas he would have been safe from all danger, if he had remained at home. Yet the same privilege is not enjoyed by him who has been challenged by another to a duel, and, upon presenting himself, is so hard put to it that, unless he run the other through, he must himself perish. For since the laws forbid one to run into that danger, no account is made of it to excuse bloodshed.

14. The same concession is made for the defense of members 38
of the body, as for that of life. Consequently he too is held innocent who has killed an assailant using force with the intention perhaps of mutilating merely a member, or inflicting a serious wound. For we naturally shrink very much from mutilation and a serious wound; and mutilation of a member, especially one of the nobler, is at times appraised as nearly equal to loss of life itself. In fact one cannot tell in advance, but death may be the result of mutilation or wound; and such long-suffering goes beyond the common self-possession of men,—a patience to which the laws do not regularly bind us, especially in favor of a wicked man.

15. Further, what is conceded in defense of life, is also accounted permissible in behalf of chastity. For no greater insult can be offered a respectable woman, than to attempt to take away against her will that virtue whose preservation brings the highest esteem to her sex, and reduce her to the necessity of rearing her offspring for a public enemy.

16. Again, the defense of property, at least among those who live in natural liberty, can go so far as the death of the assailant, provided the possessions are not such as to be contemptible. For

certainly without possessions our life cannot be preserved, and he who attacks our possessions shows as hostile a spirit as he who assaults our life. But in states, where stolen goods can be recovered by the help of a magistrate, this is not regularly permitted, except in case the man who has come to steal our goods cannot be brought to court. For this reason it is lawful to slay pirates and burglars.

17. So much for self-defense in the case of those who are assaulted by others without provocation. But the aggressor can rightly defend himself, and in so doing injure the other a second time, if, after he has been moved to repentance and has offered reparation and security against injury for the future, the injured man in a harsh spirit rejects his offer and endeavors to avenge himself with his own hand.

39 18. Finally self-preservation is so highly regarded, that, if it cannot be obtained otherwise, in very many cases it is thought to exempt from the obligation of the general laws. On this account necessity is said to know no law. Naturally, since a man is impelled with such ardor to self-preservation, it is difficult to assume that so strong an obligation has been imposed upon him, that his own safety must give way before it. For, though not only God, but also, if the seriousness of the matter requires, the civil authority may be able to impose upon us so rigid an obligation that death should be suffered rather than yield a hair's breadth therefrom, we do not always assume that the obligation of the laws is so rigid. For those who have promulgated these, or have introduced certain institutions among men, wishing of course thereby to promote the safety or advantage of men, are believed to have had regularly before their eyes the condition also of human nature, and how impossible it is for man not to avoid and avert whatever tends to his destruction. Hence regularly the laws, especially the positive sort, and all human institutions, are considered to except the case of necessity, in other words, not to oblige, when observance of them would be attended by an evil destructive of human nature, or exceeding the common endurance of men; unless even the case of necessity was included, either expressly, or on account of the nature of the affair. Therefore necessity does not indeed have the effect of making it possible for the law to be directly violated and sin committed; but from the benevolence of lawgivers, and also from a regard for human nature, it is presumed that the case of necessity is not included under a law conceived in general terms. The matter must be made clear by one or two examples.

19. Although otherwise a man has no right over his own members, to mutilate or destroy them at discretion, he will however be permitted to cut off a member attacked by an incurable disease, that

the whole body may not perish, or that parts still sound may not be involved, or that the use of other members may not be hampered by a useless appendage.

20. If in case of shipwreck more persons have leaped into a boat than it can carry, and the boat does not belong to one man 40
by a particular right, it seems that they must draw lots to see who shall be thrown overboard. And if anyone shall refuse the hazard of the lot, he can be thrown into the water, without casting his lot, as one who seeks the destruction of all.

21. If two fall into imminent danger of death, in which both must perish, it is permitted one of them, in order to save himself, to do anything which may hasten the death of the other, who would perish in any case. For example, if I, a skilled swimmer, had fallen into deep water with another who was not, and he threw his arms about me and held me, and I had not the strength to carry him out of the water with me, I could get rid of him by force, in order not to be drowned with him, even though I could hold him up somehow for a short time. So in a shipwreck, when I have seized a plank that will not hold two, if a man swimming up tries to throw himself on the same plank, and is likely to destroy us both, I shall be able to push him off by any force. So when an enemy threatens instant death to two fugitives, one can leave the other in danger for his life, by closing a gate behind himself, or by throwing down a bridge, if both cannot be saved together.

22. Necessity also gives us the right to expose another indirectly to the danger of death or serious injury, it being no purpose of ours to harm him, but only in the interest of self-preservation to undertake an act from which harm probably can come to him; provided we prefer, however, to meet the necessity of our case in any other way, and mitigate the injury itself so far as in us lies. Thus, if a stronger pursues me, with designs upon my life, and somebody happens to meet me in a narrow street, my necessary way of escape, if, though admonished, he does not give way, or the limitations of time or space do not admit of his doing so, I shall have a right to knock him down, and continue my flight over his fallen body, even though it may seem probable that he will be seriously hurt by the blow. All this, unless I am bound to the man by special obligation, so that I ought actually to take the risk for his sake. But if he who stands in the way of flight, is unable, though admonished, to get out of the road, for example an infant or a lame man, it will be at least excusable, if one tries to leap over him, rather than expose 41
one's own body to the enemy by delaying. On the contrary, if a man insolently and inhumanly blocks me, and refuses to make way for me in my flight, he can even be directly pushed and thrown down.

For the rest, those who suffer injury in such cases ought to bear the misfortune as their destiny.

23. If a man, without fault of his own, is in extreme want of food and clothing necessary against the cold, and has been unable, by prayers, or purchase, or offer of service, to prevail upon others, who are richer and in abundance, to let him have those things willingly, he may without the charge of theft or robbery take them away by force or secretly; especially if he shall have the intention of paying their estimated value, when occasion shall offer. For the rich man ought, out of humanity, to succor one placed in such straits. And although in general what is owed on the score of humanity cannot be taken away forcibly, still extreme necessity has this effect, that such things can be claimed no less than those due on the basis of a perfect obligation. It is, however, required that the poor man first try every means to meet his necessities with the consent of the owner; also that the owner be not in the same straits, or likely soon to be reduced to them. Further, there must be restitution, especially when the fortunes of the other do not permit him to make any such free gift.

24. Finally the necessity which presides over our fortunes seems to bestow upon us the permission to destroy the property of others; but with these restrictions: that the danger to our property must have come about without our fault; that it cannot be removed in a more convenient way; that we do not destroy a more valuable thing belonging to another, to save ours, being less precious; that we make good the value, if indeed the thing would not otherwise have perished; or else we should share in the loss, if the other's property would otherwise have perished along with ours, but now by its sacrifice preserves ours. This principle of equity is usually followed by admiralty law. So too, when a fire has broken out and is threatening my house, it will be permissible to tear down my neighbor's house, provided those whose houses have been thus saved make good their neighbor's loss *pro rata.*

CHAPTER VI

On Mutual Duties, and First, That of Not Injuring Others

1. Next come the duties which a man must practice toward other men. Some of them spring from the common obligation, by which the Creator willed that all men as such should be bound together. But some flow from a definite institution, introduced or received by men, or from a certain adventitious status of men. The first are to be practiced by every man toward every other; the second only toward certain persons, a certain condition or status being assumed. Hence one may call the former absolute duties, the latter conditional.

2. Among the absolute duties, i.e., of anybody to anybody, the first place belongs to this one: let no one injure another. For this is the broadest of all duties, embracing all men as such. It is also the easiest, as consisting in mere refraining from action, unless the passions that resist reason have somehow to be checked at times. Again, it is likewise the most necessary duty, because without it the social life could in no way exist. For with the man who confers no benefit upon me, who makes no interchange even of the common duties with me, I can still live at peace, provided he injure me in no way. In fact, from the vast majority of men we desire nothing more than that. Benefits are generally exchanged by the few. But with the man who injures me, I cannot by any means live peaceably. For nature has implanted in each man so sensitive a love of self and one's own possessions, that one cannot help repelling by every means the man who essays to injure them.

3. Moreover, this same duty is a bulwark not only to what a man has by nature itself, for instance, life, body, members, chastity, freedom, but also to all that has been acquired through some institution and convention of men. Hence by this precept it is forbidden to carry off, spoil, injure, or withdraw from our use, in whole or in part, anything that by any legitimate title is ours. Consequently the same duty is understood to interdict any crimes by which injury is inflicted upon others, as bloodshed, wounding, beating, robbery, theft, fraud, violence, directly or indirectly, mediately or immediately, and the like.

4. It follows also that, if a man has been hurt by another, or a loss inflicted in any way that can be properly laid to the other's charge, it must so far as possible be made good by him. For otherwise it would be a vain injunction, not to injure, or not to inflict loss, if the man who has actually been injured must swallow his loss, and his assailant can in security, and without refunding, enjoy the profit of the wrong he has done. For human depravity will never refrain from mutual injuries, unless there is the necessity of restitution. And it would be difficult for the man who has suffered loss to make up his mind to live at peace with the other, so long as he did not obtain reparation from him.

5. Although, properly speaking, loss appears to concern an injury to things, the word is however understood by us here in a broad sense, to include every injury, spoiling, diminishing, or taking away, of that which is already ours; or intercepting of that which by a perfect right we ought to have, whether this may have been given us by nature, or assigned us by act of man, or by a law; or, finally, any omission or refusal on the part of another to perform anything which he was bound to do for us in accordance with a perfect obligation. But if things due us under an imperfect obligation merely are intercepted, it is not considered that a loss has been inflicted, which must be made good. For it would be unseemly to consider it a loss not to have received, or to demand compensation for, such things as I could not expect from another except as a voluntary gift, and things which I cannot reckon my own, until I have received them.

6. Under the term loss, moreover, comes not only a thing of ours, or owed to us, which is injured, destroyed, or intercepted, but
44 also the fruits which spring from it, whether they have been gathered in already, or are still hoped for, provided the owner would have gathered them in. But we must deduct the outlay necessary to the gathering in of the crops. Also the valuation of anticipated crops is raised or lowered, according as they are nearer the uncertain outcome, or further from it. Finally also, whatever flows later from an injury, as by natural necessity, is regarded as an integral part of the damage.

7. It is moreover possible for a man to inflict loss upon another not only immediately and of himself, but also through others. And a loss caused immediately by a man can be imputed to the other, because, by doing something, or not doing something, he was bound to do, he has contributed to that result. Sometimes, as between several who have concurred in the same act, one is regarded as the principal cause, another as an accessory; sometimes all are on an even footing. With regard to these, we must observe that they are bound to make good the loss only in case they were really the

cause of the loss, and were a factor in the whole loss, or a part thereof. But when a man did not contribute any real assistance to that act itself which occasioned the loss, and did not previously cause it to be undertaken, and did not share in the profit, although at the time of the act he may involve himself in some misdeed, still he will not be bound to make restitution for the loss. Examples are, those who rejoice at others' misfortunes, those who afterward praise or excuse the damage, and those who beforehand hope it may happen, and approve or applaud at the time.

8. When several concur in a single act from which damage results, the first responsibility will be his, who by his authority, or in some other way involving constraint, urged others to act. The doer of the deed, if it was not open to him to refuse his services, will be accounted a mere instrument. Whoever without constraint has committed a crime will himself be responsible first of all, and then the others who contributed to the crime; with this reservation, that if the first in order have already made restitution, the rest are exempt (which is not the case with penalties). If several have committed a crime by conspiracy, they are collectively responsible for the individuals, and individually for all their companions, so that if all 45
are arrested, each is bound to contribute his proper share to make good the damage. Where only one is seized, and the rest escape, he will be bound to pay for them all. But where some of those arrested are insolvent, the rich ones will be responsible for the whole amount. If, however, several have concurred in a crime without a conspiracy, and it can be clearly distinguished how much each has contributed to the damage, each will be bound to make good that part alone which was due to himself. But if one has paid the whole amount, the rest are exempt from restitution.

9. Not alone the man who has injured another with malice aforethought, is bound to make good the damage, but also he who, without direct intention, has done so through neglect, or a fault which it was easy to avoid. For it is not the smallest part of sociability, to act so circumspectly that our intercourse does not become formidable or insufferable to others. And then, in consequence of a particular obligation, one is often required to use extraordinary diligence. In fact even the slightest fault can suffice to require restitution, provided the nature of the matter does not actually resent, as it were, the most exact diligence; or if the blame does not belong rather to the man who suffers the damage, than to him who causes it; or unless great excitement, or the circumstances of the case, do not admit a studied circumspection; for example, if one, while brandishing his arms in the heat of battle, should injure a man standing near him.

10. But whoever injures by mere chance, and without his own

fault, is not bound to make restitution. For nothing having been committed which can be laid to the man's charge, there is no reason why the unwilling agent should atone for an evil that was destined to happen, rather than the other, who has suffered it.

11. Another precept in agreement with natural equity is that, if my man has caused damage to another without my fault, I should make it good to the injured party, or surrender my man to him. For a slave is of course naturally liable for reparation of damage he has caused. But since he has no property of his own, from which
46 reparation may be made, and his person belongs to the master, it is surely right that the master should either mend the damage or surrender the slave. For otherwise a slave would be given license to injure any persons at his pleasure, if damages could not be recovered either from himself, who has nothing, not even himself, or from his master. For if, on account of an injury, a master is ever so willing to punish the slave with blows or imprisonment, the injured cannot possibly be satisfied thereby.

12. The same principle also seems to be right with regard to our animals, that when, even without our fault, and being of themselves excited contrary to the nature of their kind, they have caused damage to another man, the master should either make good the damage, or surrender the animal. For if I had been injured by an animal living in its natural freedom, I could certainly repair my loss in any way, seizing or killing the beast,—a right which evidently could not have been taken away by the fact of ownership on the part of another. And since the owner receives gain from the animal, while I have suffered a loss from the same, and since repairing a loss finds far greater favor than making gain, it is clear that I may rightly demand of the master of the animal, that he make good the loss, or else, if the animal is not worth so much in his estimation, deliver it up to me.

13. So then, if a man has without malice aforethought caused damage to another, he is bound to make a voluntary offer of restitution, and testify that he was far from any malice, that the injured party may not hold him an enemy, and on his side plan acts of hostility. But one who has injured another maliciously, is not only bound to make a free offer of restitution, but also to show his repentance, and ask pardon. On the other side, the injured, once he has obtained restitution, is bound to grant pardon to the penitent who begs for it, and to be reconciled to him. For he who is unwilling to rest satisfied with restitution and repentance, but sets out to avenge himself anyhow with his own hand, is only humoring the bitterness of his heart, and so for an empty reason breaking the peace among men. For this reason even the natural law condemns

vengeance, which has no other end than to harm those who have injured us, and satisfy our feelings with their suffering. But it is 47
proper that men should be the more inclined to forgive mutual offenses, the more frequently they themselves violate the laws of the supreme Deity, and hence have daily need of forgiveness themselves.

CHAPTER VII

On Recognition of the Natural Equality of Men

1. Man is an animal not only most devoted to self-preservation, but one in which has been implanted a sensitive self-esteem. And if this be in any way slighted, he is in general no less perturbed, than if an injury has been inflicted upon his person or property. Even the word *man* is thought to contain a certain dignity, so that the last and most effective argument in repelling the insolent contempt of others is this: "I am certainly not a dog, but a man as well as you." Inasmuch then as human nature is the same for all alike, and no one is perfectly willing or able to be associated with another, who does not esteem him as at least equally a man and a sharer in the common nature; therefore, among the mutual duties the second place is given to this: that each esteem and treat the other as naturally his equal, that is, as a man just as much as himself.

2. But this equality of men consists not only in the fact that adult men are about equal in strength, in so far as the weaker can inflict death upon the stronger by ambush, or with the help of dexterity, or an effective weapon; but also in this, that, although one has been fitted out by nature with various gifts of mind and body beyond the other, he must none the less practice the precepts of natural law toward other men, and himself expects the same treatment from others; and in the fact that no more freedom is given the man to injure others on that account. So, conversely too, niggardliness of nature or straitened circumstances do not of themselves condemn a man to a lot inferior to that of others as regards the enjoyment of
48 the common right. But what one can demand or expect from another, that others too must demand of him, other things being equal. And it is eminently proper that one should himself practice the law which he has set up for others. For the obligation to cultivate the social life with others binds all men equally, and one is no more permitted than another to violate the natural laws in their dealings with each other. And yet popular arguments are not lacking to illustrate that equality; for example, that we all descend from the same stock, and are born, fed, and die in the same manner; and that God has given no man assurance of a stable and unshaken fortune. So also the injunctions of the Christian religion do not commend nobility, power, or wealth, as a means of gaining the favor

of God, but sincere piety, which can be found in the humble, just as well as in the great.

3. Moreover, it follows from this equality that he who wishes to use the services of others for his own advantage, is bound in turn to spend himself, that their wants may be satisfied. For the man who demands that others serve him, but on the other hand desires to be always immune himself, is certainly considering others not equal to himself. Hence, as those who readily allow the same permission to all as to themselves, are the best adapted to society, so those are plainly unsociable who, thinking themselves superior to others, wish to have all things permitted to themselves alone, and arrogate honor to themselves above the rest, and the lion's share of the things common to all, to which they have no better right than the others. Accordingly this too is one of the common duties of the natural law: that no one, who has not acquired a peculiar right, arrogate more to himself than the rest have, but permit others to enjoy the same right as himself.

4. The same equality shows how a man should conduct himself, when he must assign their various rights to others, viz., that he must treat them as equals, and not indulge the one as against the other, except on the merits of the case. For if this is not done, the man not favored is affronted as well as injured, and the esteem Nature gave him is taken away. It follows then that a common thing must be duly divided in equal portions among equals. When it does not 49
admit of division, those who have an equal right ought to use it in common, and this as much as each shall please, if the amount permits. But if this is impracticable, they should then use the thing after a manner prescribed, and in proportion to the number of the users. For no other method of respecting equality can be devised. But if the thing can neither be divided nor held in common, let the enjoyment of it be alternate; or if this also fails, or no equivalent can be furnished the rest, the thing must be awarded to one by lot. For in cases of this kind no better remedy than the lot can be found, since this takes away the sense of a slight, and if it fails to favor a man, it does not detract from his esteem.

5. Men sin against this duty by arrogance, thanks to which a man, for no reason, or an insufficient one, prefers himself to others, and despises them, as though they were not his equals. I say " for no reason "; for when a man has duly acquired a right, which gives him preference over others, he is justified in exercising and maintaining it, short of vain conceit, however, or contempt for others. So, conversely, anyone does well in yielding to another the precedence and honor which is his due. For the rest, true generosity always has as its companion a certain humility, which consists in reflecting upon

the weakness of our nature, and the errors we may have formerly committed, or may hereafter commit,—errors not less than those which others may commit. The result of this humility is that we do not prefer ourselves to anyone, reflecting that the rest can use their free will quite as well as ourselves, as the same power is theirs. And its legitimate use is the one thing which a man can count as his own, and by which he is enabled to esteem or despise himself. But to be puffed up for no reason, is a fault truly ridiculous; because it is foolish in itself to think much of one's self for nothing; and also because one is judging all others fools, as if they would esteem you without reason.

6. A greater sin still is committed, if one show contempt for others by outward signs, acts, words, countenance, a laugh, or any kind of slur. And this sin is to be rated the worse, in proportion as it excites men the more fiercely to anger and lust for revenge. So much so, that many are found who prefer to expose their lives to immediate danger,—much more to break the peace with others,—than to let an insult go unavenged. For this damages reputation and esteem, upon whose maintenance and strength depends all their inward pleasure.

CHAPTER VIII

On the Common Duties of Humanity

1. Among the duties of men in general to others in general, and those which are to be practiced for the sake of the common sociability, the third place is taken by this: that every man promote the advantage of another, so far as he conveniently can. For since Nature has established a kind of kinship among men, it would not be enough to have refrained from injuring or despising others; but we must also bestow such attentions upon others,—or mutually exchange them,—that thus mutual benevolence may be fostered among men. Now we benefit others either definitely or indefinitely, and that with a loss, or else without loss, to ourselves.

2. A man tends to promote the advantage of others indefinitely, if he thoroughly cultivates his own soul and body, so that useful actions may emanate from him to others; or if by ingenuity he finds the means of making human life better equipped. Hence it is against this duty that they are to be thought sinners, who learn no honorable art, pass their life in silence, and have a soul "only as so much salt, to keep the body from decay," [1]—"mere numbers," and "born to consume the fruits of earth." [2] Also those who, content with the riches left by their ancestors, think they may with impunity offer sacrifice to indolence, since the industry of others has already gained for them means to live upon;

> "Or brooded selfishly o'er hoards of gold,
> Nor spared a portion for their kindred." [3]

So also those who, like swine, cheer no one except by their death; and other such cumberers of the ground.

3. But to those who endeavor to be benefactors of the human 51
race, the rest owe this in return, that they be not envious, throw no obstacle in the way of their noble efforts. Also that, if there be no other way of compensating them, they at least promote their fame and memory, this being the chief reward of labors.

4. But especially is it regarded as contemptible malignity and

[1] [A saying attributed to CHRYSIPPUS by CICERO, *De natura deorum* II, 160; cf. *De finibus*, V, 38.]
[2] [HORACE, *Epistulae*, I, 2, 27.]
[3] [Sir Theodore Martin's translation of VERGIL, *Æneid*, VI, 610 f.]

inhumanity, not to bestow willingly upon others those blessings which can be accorded without loss, trouble, or labor to ourselves. These are usually called mere favors, that is, benefiting the recipient, and not burdening the giver. Examples are: not to exclude from running water, to allow taking fire from our fire, to give honest advice to one in doubt, to point out the way kindly to him who has lost it. So if a man does not wish to possess a thing any longer, on account of an embarrassment of riches, or because maintenance is a burden to him, why should he not prefer to leave the thing intact, so that he can give the use of it to others, public enemies excepted, rather than spoil it. Thus it is not right to waste food, after we have sated ourselves, nor to stop up a spring, or hide it, after we have had enough to drink; nor to destroy aids to navigation or road-marks after we have used them. Here belong moderate alms bestowed by the rich upon the needy; also that kindness which is shown for good reason to travelers, especially when some misfortune has overtaken them; and other things of the sort.

5. A higher form of humanity is bestowing freely upon another, and out of rare benevolence, something costing money or painful effort, designed to meet his needs, or win for him some signal advantage. These are called benefits *par excellence,* and they offer the best opportunity to gain praise, if only nobility of spirit and prudence duly control them. The dispensing of these and their proper limits are governed generally by the situation of the giver and that of the recipient. And here we must take special care that our generosity do not injure both those to whom we think we are doing a kind turn, and the others too; also that the generosity be not greater than
52 our means; and again that we give to each in proportion to his worth, and above all to those who have deserved well; also in proportion to their need of our help, and with regard also to the different degrees of closeness in the relations of men. We must also consider what each needs most, and what he can accomplish or not, with or without us. The manner of giving too adds much to the acceptability of favors, if we give with cheerful face, readily, and with assurance of our good-will.

6. In return there must be gratitude in the mind of the recipient. Thus he shows that the gift was acceptable to him, and for that reason he favors the giver, and seeks an occasion to make an equal or larger return, in so far as he can. For it is not necessary to return precisely the amount of the gift; but often zeal and endeavor satisfy the obligation. However there must be no reasonable exception which we can take, as against the man who claims to have done us a favor. For example, I owe nothing to the man who has pulled me out of the water, if he first threw me in.

7. But the better suited favors are to attach the affections of men to the giver, the more earnestly must the recipient devote himself to showing his gratitude. At least we must not allow a man who, trusting us, has forestalled us in a kind deed, to be on that account in a worse situation. Nor should we receive a favor, except with the purpose of preventing the giver from repenting of his gift with good reason. For, if for a certain reason we are particularly unwilling to be under obligations to a man, it will be permissible to decline the favor tactfully. And certainly if there were no necessity of showing gratitude, it would be unreasonable for a man to throw away his property recklessly, and hasten to confer a favor which he foresees will be lost. In this way all beneficence and confidence between men would be destroyed, and likewise all benevolence; and there would be no gratuitous assistance, nor any first step in winning men.

8. Again, although there is in itself no injury in ingratitude, still it is considered more shameful, odious, and detestable, to be called ungrateful than unjust. For it is thought the mark of a very low and degenerate mind, to show one's self unworthy of the favorable judgment which the other has passed upon one's character, and 53
to be incapable of rousing one's self to feelings of humanity in return for kindnesses which charm even the brutes. But in a civil court no action is usually granted for simple ingratitude, or if a man forgets a mere favor, and when opportunity is given, still neglects to requite it. For if an action be allowed, as for a certain sum of money, the best part of the favor perishes, as it will now begin to be a loan. And whereas it is now a most honorable thing to be grateful, it will cease to be so conspicuously honorable, if it be necessary. Finally, all the courts in the world would hardly suffice for this one law, on account of the difficulty of appraising the circumstances which increase or diminish a favor. And the very reason why I *gave* the favor, i.e., why I did not stipulate that it should be repaid, was that the other man might have an opportunity to show that he has been grateful, from the love of what is honorable, not from the fear of human punishment or compulsion; and, on my part, that I may be understood to have bestowed it, not in hope of gain, but in order to practice humanity, being unwilling to demand security for the return of the gift. But he who not only does not repay a favor, but also actually requites his benefactor with evil, deserves all the more severe penalty for so doing, in proportion as he shows a more infamous malignity within.

CHAPTER IX

On the Duties of Contracting Parties in General

1. From the absolute duties we pass to the conditional, by way of agreements as a transition; since all the duties not already enumerated seem to presuppose an express or tacit agreement. We have then to treat here of the nature of agreements, and what is to be observed by those who enter into them.

2. Now it is sufficiently clear that it was necessary for men to enter into agreements. For, although the duties of humanity are widely diffused throughout human life, it is still impossible to deduce from that one source all that men were entitled to receive to advan-
54 tage from one another. For not all have such natural goodness, that they are willing, out of mere humanity, to do all the things by means of which they may benefit others, without an assured hope of receiving the like in return. Often, too, favors which can come to us from others, are of a sort to make us unable to demand without a blush that they be done for us for nothing. And frequently it is unbecoming to our station or person to owe such a favor to another. And in fact, as the other is unable to give much, so we are often unwilling to accept, unless he receives an equivalent from us. Finally, not uncommonly others are in the dark as to how they may serve our interests. Therefore, in order that the mutual duties of men (the fruit, that is, of sociability) may be discharged more frequently and according to certain rules, it was necessary for men to agree among themselves, as to the mutual performance of all that they could not certainly promise themselves from others, on the basis of the law of humanity alone. And indeed it was necessary to determine in advance, what one was bound to perform for another, and what the latter should in turn expect and exact as his right from the former. And this is done by promises and agreements.

3. In regard to these, the general duty which we owe under natural law is, that a man keep his plighted word, that is, fulfill his promises and agreements. For, but for this, we should lose the greatest part of the advantage which is apt to arise for the race from the interchange of services and property. And were there not the necessity of keeping promises, one could not build one's calculations firmly upon the support of others. And also from a breach

of faith there are apt to arise entirely just causes for quarrels and war. For when I have performed something in accordance with an agreement, if the other defaults his promise, I have lost my property, or my services, for nothing. But if, on the other hand, I have not yet performed anything, it is still an annoyance to have my calculations and plans disturbed, since I could have made other provision for my affairs, if he had not presented himself. And it is a shame to be mocked because I believed the other a prudent and honest man.

4. We must observe also, that what we owe under the mere duty of humanity differs from what is owed by virtue of a compact or perfect promise especially in this respect, viz., that things of the former class are properly asked, and honorably performed; but when 55
the other has failed of his own motion to perform, I can complain merely of his inhumanity, barbarity, or harshness; but I cannot compel him to perform, by my own force or that of my superior. This is my privilege, however, when he does not of himself perform what is due in accordance with a perfect promise or a compact. Hence we are said in the former case to have an imperfect right, in the latter, a perfect right, as also to be obligated imperfectly in the one case, and perfectly in the other.

5. We give our word either by a solitary, or one-sided, act, or by a reciprocal, or two-sided, act. For sometimes one man merely binds himself to some performance, sometimes two or more bind themselves mutually to some performance. The former act is called a gratuitous promise, the latter a compact.

6. Promises can be divided into the imperfect and the perfect. We have the former when we who promise [1] are indeed willing to be bound, in such a way, however, that we do not give the other the right to exact, or are unwilling to be compelled by force to fulfill our promise. For example, if I thus frame my promise: "I have determined in all seriousness to perform this or that for you; and I ask you to believe me." For thus I seem obligated rather under the law of veracity, than that of justice; and I prefer to be thought impelled to discharge the duty by my own constancy and solidity of character, rather than in view of another's right. Here belong the promises of men of power or influence, when in seriousness, and not in compliment they pledge to a man their recommendation, intercession, advancement, or support. They do not, however, desire by any means that these things be exacted of them as by some right, but wish to have them set down wholly to their humanity and their veracity, so that gratitude for performing their duty may be the greater, the further it was removed from compulsion.

[1] [The text contains a misprint (*cui* for *qui*), corrected in other editions.]

7. A perfect promise, on the other hand, is when I am not only willing to be bound in any case, but also confer upon the other at the same time a right, so that he can demand of me in full, as owed to him, the thing I promised.

8. Moreover, that promises and compacts may bind us to give or do something not formerly required of us, or to omit what we
56 previously had a right to do, our voluntary consent is most essential. For, since the fulfillment of any promise and agreement is associated with some burden, there is no better reason to prevent our justly complaining about it, than the fact that we voluntarily consented to what it was evidently in our own power to avoid.

9. Consent is, to be sure, regularly and usually expressed by signs, for example, words, letters, and nods; but it sometimes happens that without these signs, from the very nature of the business and other circumstances, consent is clearly inferred. Thus at times silence, considered together with certain circumstances, is effective, instead of a sign of consent. Hence there are also tacit agreements, namely when our consent is expressed not by such signs as are regularly accepted in men's intercourse; but when it is clearly inferred from the nature of the business and other circumstances. So too, a principal agreement has often attached to it a tacit agreement, which flows from the very nature of the business. And so also it is very common in compacts for certain tacit exceptions and necessary conditions to be understood.

10. But to be able to give clear consent, the use of reason is required to this extent, that one understand the business in hand, whether it is proper for one, and can be performed by one; and then, when this has been weighed, that one be able to indicate his consent by sufficient signs. Hence it follows that the promises and agreements of infants, as also of idiots and the insane (except where their madness is marked off by lucid intervals), are null. And this must also be declared of the promises of the intoxicated, if intoxication has already gone so far that reason is plainly overpowered and stupefied. For it cannot be called a true and deliberate consent, if a man incline ever so much to an act by a momentary and unconsidered impulse, or give signs under other circumstances indicative of consent, at a time when the mind has been, as it were, displaced by some drug. Moreover it would be shameless to exact the fulfillment of such a promise, especially if involving a great burden. Again, if a man lay in wait for such intoxication, and observing the other's complaisance, cunningly extracted a promise, he will not be immune
57 even from the charge of trickery and fraud. But whoever, after shaking off his intoxication, has confirmed his acts during that state,

will certainly be obligated, not on the score of what he did when drunk, but of what he did when sober.

11. As for children, how long weakness of reason, hindering them from contracting an obligation, lasts in their case, cannot, in general, be very accurately defined, since in some judgment matures more quickly, in others more slowly. But that must be judged by the daily actions of each child. And yet in most states civil laws have established here a certain limit of time. So also in some places it is a salutary custom, that in contracting obligations infants must employ the authorization of more prudent persons, until the rash impulsiveness of youth is thought to have cooled off. For that age, even when it understands the business in hand, is generally carried away by a strong and short-sighted impulse, and is easy in making promises, hopeful, seeking a reputation for liberality, prone to interested friendships, and unacquainted with distrust. Hence he is scarcely to be acquitted of trickery, who takes advantage of that easy-going age, and wishes to enrich himself by the losses of others, which they, on account of feeble judgment, know not how to foresee or to estimate.

12. Consent is further hindered by an error. With regard to this, these rules must be observed: (1) When in a promise I have supposed anything as a condition, without reference to which I should not have promised, naturally the promise will have no force. For the promiser agreed not absolutely, but on a condition; and this not being realized, the promise too is null. (2) If I was led to agree or contract in consequence of an error, and I shall discover it while the matter is still intact and nothing has as yet been performed, it will certainly be equitable to allow me the opportunity to repent; especially if, in entering the agreement, I have openly declared the reason impelling me thereto, and if the other suffers no loss from my change of mind, or I am ready to make it good. But when the matter is no longer untouched, and the error becomes known only after the agreement has been fulfilled in whole or in part, the man 58
who was mistaken cannot withdraw from his agreement, except in so far as the other is willing out of humanity to indulge him. (3) When an error has arisen in regard to the very thing which was the object of the agreement, the latter is vitiated, not so much on account of the error, as because the terms of the agreement were not satisfied. For in agreements the object in regard to which they agree, and its qualities, ought to be known, without which knowledge clear consent is unintelligible. Hence, on the discovery of a defect, the man who would have been injured can either withdraw from the contract, or compel the other to make good the defect, or even to pay the difference, when trickery or a fault on his part was involved.

13. But if a man was induced by the other's trickery and

malicious fraud to promise or contract, we must hold these principles: (1) If a third person has employed guile, without collusion of the contracting party, the matter will stand; but from him who employed guile we shall be able to demand what we should have gained, if we had not been deceived. (2) If a man by guile has given me occasion to promise him something, or make some agreement with him, I am not bound to him at all in consequence of that act. (3) If a man shall enter into an agreement voluntarily and with evident intention, but still guile shall appear in the affair itself, for instance, in regard to the object, or its qualities and value, the agreement will be defective, so much so, that it is within the discretion of the deceived party to dissolve it entirely, or to demand compensation for the damage. (4) Matters not essential to the affair, and not expressly mentioned, do not vitiate an agreement otherwise made in due form, even though one of the parties may have made a tacit assumption while contracting, or his belief may have been cunningly confirmed, until the contract should be concluded.

14. Fear, as involved in promises and agreements, is understood in two senses: either as a plausible suspicion, that we may be deceived by the other, either because such a defect is inherent in his mind, or else because he has shown quite clearly his malicious intention; or, in the second place, as great terror, arising from the threat of serious harm, if we are unwilling to promise, or to enter the agree-
59 ment. With regard to the former kind of fear we must understand: (1) That whoever trusts the promises and agreements of a man whose honor is in general worthless, acts imprudently to be sure; but that an agreement is not made void by that sole cause. (2) When the agreement has been once entered into, and no new indications come to light of a deception aimed at us, it will not be open to us to withdraw from the agreement, on the pretext of defects which were recognized before it was made. For a reason which did not prevent a man from contracting, ought not to prevent him from fulfilling his contract. (3) When after the agreement has been entered very evident indications come to light, that the other man plans to cheat me, after I have first done my part, then I cannot be compelled to do so, until security has been given me against that deception.

15. With regard to the other species of fear, these rules are to be observed: (1) Contracts entered into on account of fear inspired by a third party are valid. For in this certainly no defect is involved, to prevent the other man from getting his rights under the contract as against me, and he certainly deserves compensation for having removed the fear inspired by the third party. (2) Contracts entered into from fear of, or respect for, legitimate authority, or through deference to those to whom we are under great obligations, are valid.

(3) Contracts into which a man is unjustly forced by the very person to whom he gives the promise, or with whom he contracts, are invalid. For the injury which he inflicts upon me by inspiring an unjust fear, renders him incapable of claiming his rights against me under the agreement. And since one is otherwise bound to make good a loss occasioned by himself, therefore, if what should have been at once restored, is not paid, then the obligation is annulled by the counter-claim.

16. Furthermore, consent should be mutual, not only in contracts, but also in promises, so that both promisor, and promisee, must consent. For when the consent of the latter is lacking, or when he has refused to accept the offered promise, the thing promised remains in the hands of the promisor. For he who offers something of his own to another, neither wishes to obtrude it upon him against his will, nor to consider it ownerless. Hence, if the other does not accept it, the right of the promisor over the thing offered is undiminished. 60
But if there was a previous request, it will be held to continue, unless expressly recalled; and in that case acceptance is understood to have taken place in advance, provided the offer corresponds to the request. For if there is a discrepancy here, an express acceptance is required, since often my interests are not served, unless I receive the amount for which I asked.

17. As for the subject-matter of promises and agreements, it is required that what we promise or agree to, be not beyond our powers, and that we be not forbidden by some law to perform it. For otherwise we are making either a foolish or a criminal promise. It follows then that no one can bind himself to what is for him impossible. If, however, a thing considered possible at the time of entering the agreement, has later by some chance become impossible, for no fault of the contractor, if nothing has yet been done, the contract will be void. If anything has been already done by the other, it must be restored, or an equivalent repaid. If even this is impossible, the greatest pains must be taken, that the other suffer no loss. For in contracts we have regard primarily to that upon which there was express agreement. When we cannot obtain this, it suffices if an equivalent is furnished. At least we must by all means take care that we experience no loss. But a man who, by guile or serious fault, has diminished his own powers of performance, is not only bound to make the utmost efforts, but can be punished into the bargain, to make good, as it were, any deficiency.

18. It is clear also that we cannot be bound to perform anything unlawful. For no one can effectively put himself under an obligation beyond his own power. But he who by a law forbids an action, of course takes away the power of undertaking it, and of accepting an

obligation to perform it. For it would be a contradiction, to be bound absolutely under an obligation confirmed by the laws to do something forbidden by the same laws. Hence he who promises unlawful acts is guilty; twice guilty he who performs such promises. From which we further conclude that promises which will be injurious to him for whom they are made, ought not to be kept; since it
61 is forbidden by the natural law to cause harm to another, even if he foolishly desires it. If then an agreement concerning a shameful thing has been entered into, neither party will be bound to perform it. In fact, even when the shameful deed has been committed by one of them, the other will not be bound to pay the wages agreed upon. But whatever has already been given with such a motive, cannot be recovered, unless trickery or extraordinary damage may be involved.

19. Finally, it is also clear that promises or agreements affecting things belonging to others are void, in so far as these are subject not to our direction and will, but to those of another. But if I promise to exert myself to have the other perform something (presupposing that I cannot command him by authority), then, by every means morally possible (i.e., in so far as the other can ask it of me honorably, and regard for the civil life permits), I am bound to use my efforts to persuade him to do his part. Moreover, as regards things or actions of mine, to which another has by this time acquired a right, I cannot make a valid promise to a third person, except with a view to the possibility that the other's right may expire. For one who by previous promises or agreements has already transferred his right to another, certainly has no longer any right left, such as he can confer upon a third person. And it would be no trouble to void all promises and agreements, if it were permitted to enter upon another, which made contrary dispositions and could not be fulfilled at the same time with the previous agreement. Upon this rests the old saying, " First in time, first in right."

20. With regard to promises it is further to be particularly observed, that they are usually made either simply and absolutely, or under a condition, that is, the validity of the promise is attached to some occurrence depending upon chance or the will of man. Now conditions are either possible or impossible. The former are subdivided into the casual or fortuitous, the existence or non-existence of which is not in our power; discretionary or arbitrary, the existence or non-existence of which is in the power of him to whom the promise is given; and mixed, the fulfillment of which depends partly upon the will of him to whom the promise is given, and
62 partly upon chance. The impossible conditions are such either physically or morally, that is, some things cannot in the nature of things be done, and some ought not to be, as contrary to laws and morality.

And impossible conditions, if we follow the natural and simple interpretation, negative the language of a promise. And yet, legally speaking, it is possible, in case they have been added in some serious affair, to regard them as non-existent, that men may not be mocked by agreements which can have no outcome.

21. Finally, we promise and contract, not only of ourselves, but also through the intervention of other men, whom we have ourselves appointed as go-betweens and interpreters of our will. And when they in good faith have done what was contained in our instructions, we are under a valid obligation to such persons as have dealt with them as our representatives.

22. Such are the absolute duties of man, as also those which serve as a transition to the other kind. The rest presuppose either some human institution, based upon a universal convention, and introduced among men, or else some particular form of government. Of such institutions we observe in particular three: language, ownership and value, and human government. We must next explain each of these, together with the resulting duties.

CHAPTER X

On the Duty of the Users of Language

1. There is no one who does not know how useful and entirely necessary an instrument of human society language is. For many have inferred from that faculty alone that man was destined by Nature to lead a social life. Hence, as regards its legitimate and profitable use for human society, natural law prescribes to men this duty, that no one deceive another by language, or by other signs
63 designed to express the thoughts of the mind.

2. But, the more thoroughly to understand the nature of language, we must know that there is a twofold obligation as regards language expressed *viva voce* or in writing. One is that by which users of the same language are bound to apply a certain word to a certain thing, according to the usage of the particular tongue. For neither sounds nor certain shapes of letters naturally mark a certain thing, for otherwise all tongues or kinds of writing ought to be identical. Hence, that the use of language be not in vain, if each were to call a thing by any name he pleased, there must be among the users of the same language a tacit convention, to designate a certain thing by a certain word and no other. For unless there has been agreement upon a uniform application of words, it is impossible to gather from another's speech the thoughts of his mind. Therefore by virtue of that compact every man is bound in common speech to employ words according as the established usage of that language prescribes. Hence it follows also that, although thoughts may possibly be out of harmony with speech, in human life each is thought to have meant just what his words indicate, even though the inward purpose of the mind may be at variance with them. For as to that, nothing can be known except by signs, and thus all use of language would be rendered of no effect, if in the common life the inward thought, which each can feign according to his own caprice, could nullify the meaning of the signs.

3. The other obligation which has to do with language consists in this, that a man ought so to reveal his thoughts to another by language, that they may be clearly known to him. For, since man has the power not only to speak, but also to be silent, and is not bound to disclose what he has in mind openly to all and sundry, therefore

there must exist a particular obligation, to impose upon one the necessity both of speaking, and of so speaking that another can understand our thoughts. And that obligation arises either from a particular agreement, or from a common precept of the natural law, or from the nature of the business in hand, in the transaction of which speech is employed. For often there is an express agreement with a man, that he disclose to me his mind concerning some matter 64
of business, for example, if I engage a man to teach me some subject. Often too some precept of the natural law bids me share my knowledge with another, that so I may help him, or avert some harm for him, or avoid furnishing cause or occasion for his suffering harm. Finally, sometimes the affair in hand, begun with another, cannot be completed, unless I disclose my judgment in the matter, as is the case in making contracts.

4. But as it does not always happen that under some one of these heads I am required to make known my mind to another, it is evident that I am bound to indicate to him in speech only such matters as he has a right, either perfect or imperfect, to learn from me; and hence also that, no matter how insistent the questions are, I can rightly conceal things which the other has no right to know from me, and which I am bound by no obligation to reveal.

5. In fact since language was invented not only for others, but also for our own sake, for that reason, where some advantage of mine is involved, and no other man's right is injured, I may so shape my speech as to express something different from what is in my mind.

6. Finally, as those to whom we speak are often so situated that, if they should learn the fact in plain and open language, it would be to their own injury, and we should be unable to accomplish the good end which we have in view, it will therefore be permissible in these cases to use fictitious and figurative language, not directly conveying our meaning and intention to the hearers. For he who desires to benefit a man, and ought to do so, is certainly not bound to do it in a way which would defeat his own end.

7. From these principles we learn what constitutes the truth, devotion to which so highly commends good men; namely, that words should aptly reproduce our thoughts to another, who has the right to know them, and which we are under an obligation, perfect or imperfect, to disclose. And all this to the intent that by knowledge of 65
our mind he may gain some advantage which is due him, or may not suffer an undeserved loss, if incorrectly informed. From this it is incidentally evident, that it is not always a lie even when purposely we do not say what exactly squares either with the fact, or with our thoughts; and thus that logical truth, which consists in the

conformity of words to things, does not altogether coincide with moral truth.

8. It is a lie, however, when speech deliberately expresses an opinion different from our real mind, in spite of the fact that the person addressed had a right to know it, and that an obligation rested upon us to let him at least know our opinion.

9. From what has been said it is then established that the stigma of a lie is not incurred by those who employ fictions and fables for the better information of children or the childlike, since they lack capacity for the naked truth. The same is true of others who make use of fiction for a good end which they could not attain by plain language; for example, if they must protect an innocent man, appease the angry, comfort the sorrowing, encourage the timid, persuade the squeamish to take medicines, break down someone's obstinacy, defeat another's evil intention; or in case secrets of state and plans which ought to be kept from the knowledge of others, must be veiled by fictitious reports, and the ill-timed curiosity of others disposed of; or if by tales, in lieu of a stratagem, we baffle an enemy whom we might have injured openly.

10. On the other hand, if a man was indeed bound clearly to indicate his mind to another, he does not escape blame, if he tells merely a part of the truth, or deceives another by ambiguous language, or retains a tacit mental reservation, out of keeping with general practice.

CHAPTER XI

66

On the Duty of Those Who Take Oaths

1. By an oath it is held that a striking confirmation is added to our speech, and all the acts in which speech has a part. For it is a religious affirmation, in which we renounce our claim upon the Divine mercy, or call down the Divine punishment upon ourselves, if we do not tell the truth. And while the omniscient and omnipotent witness, who is at the same time the avenger, is being invoked, the presumption of truth is created by the fact that hardly anyone is thought so impious that he will dare thus insolently to call down upon himself the dire wrath of the Deity. Hence it is understood to be the duty of oath-takers to approach the oath with reverence, and then religiously to observe their oath.

2. Moreover the end and use of an oath consists chiefly in this, that men may be bound all the more firmly to declare the truth, or to keep promise or contract, by fear of the omniscient and omnipotent Deity, whose vengeance, if they knowingly deceive, they call down upon themselves by the oath, whereas the fear of men seemed ineffectual. For they hoped to be able to despise or elude men's power, or escape their knowledge.

3. But because, aside from God, there is nothing omniscient or omnipotent, it is absurd to take an oath by something which is not believed to be divine, with the idea that that thing is being invoked as witness and punisher of perjury. And yet it is common in oaths to name a certain thing and swear by it, with the understanding that, in case of perjury, God may wreak His vengeance on that particular thing, as very dear to the deponent, and highly esteemed by him.

4. In oaths the formula, in which God is described, while invoked as witness and avenger, must be adapted to that belief or religion which the taker of the oath cherishes in regard to God. 67
For it is vain to require of a man an oath by a god whom he does not believe in, and so does not fear. But no one thinks he is swearing by God, if under another formula or under another name than that contained in the teachings of his own religion,—the true religion in the opinion of the deponent. Hence also he who swears by false gods, whom he however holds to be true, is certainly bound, and in case he deceives, really commits perjury. For under some special concept he had before his eyes a general notion of deity, and so, in

knowingly forswearing himself, he has violated, so far as in him lay, the reverence due the majesty of God.

5. To the binding force of an oath it is necessary that it be undertaken with a deliberate intention. Hence one who has read an oath aloud, or dictated its formal wording in the first person to another, is not bound at all by an oath. But one who gave the appearance of intending seriously to swear, certainly will be bound, no matter what he had in mind while swearing. For otherwise the whole practice of oaths, or rather every means of binding one's self by recourse to outward signs, would be taken away from human life, if by mental reservation one could prevent a formal act from having the effect which it was designed to produce.

6. Oaths do not in themselves produce a new and particular obligation, but are added as a sort of accessory bond to an obligation in itself valid. For always in swearing we suppose something, failing to perform which, we call down upon us the Divine punishment. And this would be foolish, if it were not unlawful to fail to perform the thing in question, in other words, if we were not already bound. Hence it follows that formal acts, to which attaches a defect nullifying the obligation, do not become obligatory by the addition of an oath. In the same way a previous valid agreement is not destroyed by a subsequent oath, nor is a right which another had thereby acquired now taken away from him. Therefore it is vain to swear that one will not pay one's debt to another. And an oath is not binding when it is established that the swearer supposed some fact which
68 in reality was not such, and would not have sworn, if he had not so believed; especially if he was led into error by a trick on the part of him to whom he swore. Also the man who by an unjust fear makes me take an oath acquires in consequence of that oath no right legally to demand anything of me. Of no effect also is an oath concerning the performance of an unlawful act; or even that which concerns the omission of some good deed enjoined by laws divine or human. Finally, an oath does not change the nature and substance of a promise or contract to which it is added. Hence it is in vain that one swears to impossible things. And a conditional promise is not changed into an absolute or simple one by an oath. And acceptance is required just as truly in the case of a promise under oath.

7. Moreover, by reason of the added appeal to God, whom none may deceive by cunning nor mock with impunity, oaths have this effect, that not only is a severer penalty thought to await him who has proved false to a sworn than an unsworn promise; but also that trickery and equivocation must be excluded from dealings to which oaths are added.

8. Not always, however, are oaths to be interpreted in a broad sense, but also sometimes strictly, if indeed the subject-matter seems to require it; for example, if the oath took the direction of hatred toward another, and was added to threats, rather than to a promise. In fact even an oath does not exclude tacit conditions and limitations, which properly flow from the very nature of the thing; for example, if under oath I have given a man the privilege of asking anything that he pleases, in case he asks unjust or absurd things, I shall not be bound at all. For whoever at another's request makes an indefinite promise, not yet knowing what he is going to ask, presupposes that the other will ask things honorable, morally possible, and not absurd or dangerous for himself or others.

9. We must also note that in oaths the sense of the whole text prevails as avowedly understood by the man who tenders the oath, that is, the man to whom we swear. For it is in his interest especially, not that of the swearer, that an oath is given. Hence it is his privilege also to frame the words of the oath, and with all possible clearness. And he must show how he understands them, 69
while the swearer should declare that he clearly understands the meaning; and he must clearly pronounce the words, so that he can in no way equivocate or evade.

10. The division of oaths is conveniently based upon the use to which they are put in the common life. For some are added to promises and contracts, that they may be observed the more scrupulously. And some are employed to confirm a man's assertion concerning a fact that is not clear, and where the truth cannot be discovered more conveniently by other means. Such an oath is demanded of witnesses, that is, persons thought to have knowledge of another's deed. Sometimes also those who are at odds settle their suit by taking an oath, as proposed by the judge or the other party.

CHAPTER XII

On Duty as regards the Acquisition of Ownership

1. Such is the constitution of the human body, that it needs for its nourishment things which it takes from without, as also for its protection against whatever tends to destroy its structure, and that this life can be made more comfortable and easy by a number of different things. Hence it is a safe inference that it is with the entire consent of the great Ruler of the universe that man makes use of other creatures for his own needs, and even destroys many of them. And this obtains not only as regards vegetables, and things that are destroyed without sensation, but also concerning innocent animals, which, in spite of the pain of their death, are killed and consumed by man for food without sin.

2. But in the beginning all these things are understood to have been set out by God in the midst, as it were, of men, so that they be-
70 longed no more to one than to another; but so, however, that men should make such arrangements in regard to them as the constitution of the human race, regard for its peace and quiet, and the maintenance of good order seemed to demand. And thus, while the race of mortals was limited to a few, it was decided that whatever a man had laid hold of, with the intention of applying to his own needs, should be his, and ought not to be taken away from him by another; but that the substances from which those things were derived, should remain in common, not pertaining to any one in particular. But later, when men had multiplied, and cultivation had come to be applied to the things from which food and clothing are produced for man, in order to avoid quarrels, and to introduce good order, even the substances of things were also divided among men, and to each his own portion was assigned. And this convention was added, that whatever in the first division of things was left common, could thereafter become the property of the first claimant. So then by the will of God, the consent of men in advance, and an agreement at least tacit, property in things, or ownership, was introduced.

3. Ownership then is the right by which the substance, so to speak, of a thing belongs to a man, so that it does not belong as a whole in the same way to another. Hence it follows that we can dispose as we please of things belonging properly to us, and can exclude any others from the use of them; except in so far as they

have acquired a special right from us by agreement. Yet in states it usually happens that ownership is not always unrestricted in the case of all men, but circumscribed with certain limits by civil authority, or by an arrangement or convention which men have made with each other. When one thing, however, belongs to several in the same way and without division, it is said to be common to those persons.

4. But as things have not come to be owned all together or at once, but successively, and as the need of the human race seemed to require; so it was not necessary for every single thing to be appropriated; but without detriment to the peace of the race some things could, and others should, remain in the primeval common 71
condition. For if things are useful indeed to men, but yet inexhaustible, so that they can be free for all to use, and still the individual's use is not thereby more niggardly, it would be superfluous and foolish to wish to divide them. Examples are the sun's heat and light, air, running water, and the like. Here belongs also the vast ocean, lying between great continents, so far as concerns those parts of it very distant from the coasts; since not only is it entirely sufficient for the varied needs of all, but also its custody is morally impossible for any one people. For when a thing is so constituted that others cannot by any means be excluded from its use, to divide it, or make property of it, is superfluous, and also apt to furnish occasion for vain litigation.

5. The methods of acquiring ownership are either original or derivative. By the former a thing becomes property in the beginning; by the latter an ownership already established passes from one to another. Again the former are either absolutely such,—and by these ownership of the substance of a thing is acquired,—or relatively, by which property already ours receives some accession.

6. After individual ownership of things had been adopted among men, it was agreed by them that whatever had not come under the primitive division should fall to the occupant, that is, the first man to seize the thing by physical means, with intent to keep it for himself. Hence to-day the only original method of acquiring ownership of the substance of a thing is occupancy. By this means then we acquire desert regions which no man ever claimed as his. These become the property of him who first enters them with the intent to keep them for himself, bringing them under cultivation, and establishing certain limits up to which he claims ownership. But when a numerous company jointly occupies any tract of land, the common practice is to assign some part of it to the individual members of the company, and to count the remainder as belonging to the whole company. By occupancy also are acquired wild beasts, 72

birds, fishes in the sea, rivers, or lakes; also whatever is usually thrown up by the sea upon the shore; provided, however, the promiscuous capture of things of this sort has not been interdicted by the civil authority, or assigned to some particular person. If these are to become ours, we must seize them by physical means, and bring them into our power. By occupancy also we acquire things, when the ownership to which they had previously been subject has been clearly extinguished. For instance, things thrown away with the intent that they are no longer to be ours, or things which we lose unwillingly in the first place, but later count as abandoned. Here too belongs the treasure-trove, that is, money whose owner is unknown. This falls to the finder, when it has not been ordained otherwise by the civil laws.

7. But very many things which are subject to ownership do not always remain in the same condition, but enlarge their substance by various kinds of increase. Some others receive accession from without; still others bring forth fruit; many have their value increased by the form which human industry has added to them. All of which can be comprehended under the term accessions, and they are divided into two classes. For some things are produced by their nature alone, without act of man; some are procured by the act and industry of men, either wholly or in part. With regard to these there is this rule, that if a man is the owner of a thing, to him also belong accessions and any profits; and that he who has made a new product out of his own material, is the owner of that product.

8. Frequently, however, it has happened that other men, as the result of a contract, or other means, have acquired a right to receive a certain benefit from a thing belonging to us, or to hinder us from using a thing of ours without restriction. These rights are commonly called servitudes, and are divided into personal servitudes, in which an advantage accrues directly to the person from the property of another; and real servitudes, in which the advantage is derived from another's property through the medium of our own. Among the former are numbered usufruct, use, the right of dwelling, the services of slaves.
73 Again the real servitudes are divided into urban and rural. In the former class are, for example, the servitude of a supporting wall or column, that of windows, those which prevent the blocking of our light or view, that which requires one to receive the drippings of a roof, etc. To the latter class belong, for instance, right of passing, that of driving, that of building a road or an aqueduct, of drawing water, of driving cattle to water, of pasturage, etc. Nearly all of these have been introduced as a result of proximity.

9. Among the derivative methods of acquisition there are some in which a thing passes to another in accordance with the provision of a law, others in view of an act of the former owner. And the

result is either that a man's entire property is transferred, or a certain portion thereof.

10. An entire property passes by law to another through the death of the former owner in intestate successions. For it would be repugnant to the general inclination of men, and not in the least conducive to the peace of the human race, that property which a man had acquired with such labor in his lifetime, should after the death of the owner be regarded as abandoned, and open to the occupancy of anybody. Hence, under the guidance of reason, it has been accepted among all peoples, that, if a man had himself made no disposition of his goods, these should devolve upon those whom, in accordance with the common affection of men, he is thought to hold most dear. Such are regularly those who descend from us, and then others connected with us by blood, each according to the degree of propinquity. And though there are some men who, either on account of benefits received, or out of peculiar affection, love certain strangers more than their own relatives, still the interests of peace required men, neglecting the affection of a few, rather to follow the common inclination of mortals, and to observe the simplest method of succession, and one exposed to no intricate disputes. These would have cropped out, if benefactors and friends could compete with those who rest their claim upon blood. And if the man had any wish to prefer benefactors or friends to kinsmen, he should have made an express statement of the matter.

11. It follows then that a man's nearest heirs are his own children, whose maintenance and rearing Nature has earnestly com- 74
mended to parents; and every parent is supposed to have wished to provide for them as amply as possible, and to leave to them by preference whatever remains to himself. And by children we understand especially those born in lawful wedlock. For reason itself, and the proprieties of the civil life, and the laws of the more civilized nations, favor such more than natural children. But what has been said does not hold good, if a father has, for sufficient reasons, refused to recognize a person as his son, or has disinherited him on account of shameful depravity. Under children are further included those who belong to the remoter degrees. These the grandfather is bound to support, their own parents being dead; and hence it is entirely just that grandchildren should share the grandfather's estate, along with their uncles on both sides. Otherwise, in addition to the misfortune of losing their father prematurely, they would be excluded from the grandfather's estate. When there are no descendants, it is right that the property of deceased children devolve upon their parents. Those who have no surviving children and parents, will be succeeded by their brothers. When these too are lacking, the

heirs will be determined by their degrees of consanguinity to the deceased. In order, however, to avoid the suits which can very frequently arise in these cases, and that the matter may be well adjusted to the interests of the state, we find that in most states the order of succession has been precisely determined. And it is safest for citizens to follow this order, unless important reasons force them to make a special disposition.

12. By act of the former owner an entire property passes after his death to another by virtue of a will. For as a poor consolation for our mortality it has been established among most peoples that a man can in his lifetime transfer his possessions in the event of death to him whom he loves most. But whereas in the earliest times it appears to have been the practice, when death was imminent, to name one's heirs openly, and to pass over the property actually into their hands, later, for weighty reasons, many peoples preferred another form of will. This namely enabled a man, at any time he pleased,
75 either openly to indicate his last will, or silently to authenticate it in writing. And this he could change at his discretion, while from it the heirs named *viva voce* or in writing derived no right until the death of the testator. Such last wills deservedly enjoy high favor; yet they must be regulated as the interests of relatives and the good of states requires. Hence the latter are accustomed to prescribe by law how a man is to draw up his will. And whoever departs from such prescription, is unable to complain that his will has been disregarded.

13. Among the living, things pass by act of the former owner either gratis, or by means of a contract. Transfers of the former kind are called donations. Of contracts we must treat later.

14. Sometimes things are transferred even against the will of the former owner, and in states this is especially by way of penalty, when men convicted of crimes have, now all their possessions, now a certain part of them, taken away, and applied to the state or else to the injured party. So too in war, things are taken away from unwilling owners by an enemy in superior force, and acquired by him who seizes them. But the former owner does not lose his right to recover them by similar violence, until by a subsequent treaty of peace he has renounced all claim to them.

15. Finally, there is a particular kind of acquisition called *usucapio*, or prescription, by which a man who in good faith and by fair title has gained possession of a thing, and has held it long in peace and without interruption, is at length regarded as its absolute owner, so that he can repel the old owner, if he wishes later to reclaim it. The reason for the introduction of this right was partly that a man who neglected for a long time to reclaim a thing was considered

to have abandoned it, since in the long interval it was thought that opportunities therefor could scarcely have been lacking; and partly because the interests of peace and quiet required that possessions should finally be put beyond controversy. And this especially because it seemed much more serious to be deprived of a thing gained in good faith after long possession, than to lack permanently a thing formerly lost, the desire for which had been dissipated long ago. But 76
in states peace and quiet require that certain periods he defined, within which prescription may be completed, according as reason and the need of the state suggest.

CHAPTER XIII

On the Duties Which Result from Ownership Per Se

1. Out of the introduction of ownership these duties have come into being among men: in the first place, that every man is bound to allow another (not a public enemy) to enjoy his possessions in quiet, and not bring himself to injure them, make off with them, or appropriate them, by force or by fraud. By this duty thefts, robberies, and similar crimes aimed at the property of others, are forbidden.

2. In the second place, when a thing belonging to another has come into our hands without our guilt, and with good faith on our part, and we still have it in our power, we are bound, so far as in us lies, to bring about its return to the power of its legitimate owner. We are not, however, bound to restore it at our expense, and if we have incurred any in order to keep it, we have a right to recover, or to retain the thing until the expenses have been paid. And we are not actually bound to restore until we are informed that the thing belongs to another. For then we are bound to report that the article is in our possession, and that, so far as we are concerned, it is open to the owner to recover it. But if we have acquired the thing by a just title, we are not ourselves bound to call the matter in doubt, and as by a public proclamation to ask if anyone wishes to claim it as his own. And this duty outweighs particular contracts, and allows an exception to them; for example, if a thief shall deposit stolen goods with me unaware of the theft, and later the true owner appears, I shall be bound to restore the property to him, not to the thief.

3. In the third place, if a thing belonging to another, acquired in good faith, has been consumed, it is the part of duty to restore to
77 the owner an amount equal to that by which we have been enriched, that we may not gain by another's undeserved loss.

4. From these duties then the following conclusions are derived: (1) A bona fide possessor is not bound to make any restitution, if the thing has perished, because he has neither the thing itself, nor gain therefrom.

5. (2) A bona fide possessor is bound to restore not only the thing, but also the still existing fruits of it. For naturally the owner of the thing is also owner of the fruits. But the possessor may subtract all expenses incurred for the thing or its care, that the fruits might be obtained.

6. (3) A bona fide possessor is bound to restore the thing and the fruits that have been consumed, provided he would otherwise have consumed as much, and can recover the value of the thing he is obliged to restore from him of whom he received it. For in consuming another's property and sparing his own he has enriched himself.

7. (4) A bona fide possessor is not bound to make good fruits which he has neglected. For he has neither the thing, nor anything that has taken its place.

8. (5) If a bona fide possessor has had something belonging to another presented to him, and then presents it to a third party, he is not bound, unless in any case he was going to make an equal gift in consequence of some duty. For then it will be a gain to have spared his own property.

9. (6) If a bona fide possessor has for a real consideration acquired something belonging to another, and has then alienated it in any way, he is not bound, except in so far as he has made gain out of it.

10. (7) A bona fide possessor is bound to restore another's property, even though acquired for a real consideration, and cannot reclaim what he has spent from the owner, but only from the person from whom he received the thing; except in case the owner could probably not have recovered possession of his property without some expense, or has voluntarily offered a reward for information.

11. The finder of something which the owner was probably sorry to lose, cannot take it up with the intention of withholding it from the owner when he comes to inquire. But when the owner does not appear, the finder has a right to retain it for himself.

78

CHAPTER XIV

On Value

1. After ownership had been introduced, and since all things were not of the same nature, and did not yield the same service to human necessities, and no one had that abundance which he desired for his needs, it soon became customary among men to exchange commodities. But it very often happened that things of unlike nature or use had to be transferred, and hence, that one party or the other might not suffer in this sort of exchange, it was necessary for human convention to assign things a quantity, according to which they could be compared and balanced with one another. This also was the case with actions, which men were unwilling to render for others' advantage for nothing. This quantity usually goes by the name of value.

2. Value is divided into common value and value *par excellence*. The former is seen in things, and actions or services, which enter into trade, in so far as they bring men some use and pleasure. The latter is seen in money, in so far as it is understood virtually to contain the price of all things and services, and to furnish them a common standard.

3. Of common value the foundation as such is that aptitude of the thing or the service, by which it can contribute something directly or indirectly to the necessities of human life, and to make it more comfortable or agreeable. Hence we usually call things that serve no use at all things of no value. Yet there are some things most useful for human life, upon which things no definite value is understood to have been set, either because they do not admit of ownership, and necessarily so, or because they are unsuited for exchange, and hence withdrawn from trade, or because in trade they are never considered otherwise than as an addition to something else. Moreover the law, human or divine, in placing certain actions outside of
79 trade, or forbidding one to perform them for hire, is understood also to have deprived them of value. So too, inasmuch as the upper parts of the air, the ether, and the heavenly bodies, and the vast ocean, are exempt from human ownership, no value can be assigned to them either. Thus a free person has no value, because free men are not articles of commerce. Thus sunlight, clear and pure air, the fair

face of the earth, in so far as it merely feasts the eyes, and wind, and shade, and the like, considered in and by themselves, have no value, since men cannot enjoy such things without the use of the earth. Yet these very things are of great moment in increasing or diminishing the value of regions, lands, and estates. So it is unlawful to set a price upon sacred acts, to which a moral effect has been assigned by divine ordinance. This crime is called simony. And a judge also commits a crime, if he sells justice.

4. Moreover, there are various reasons why the value of one and the same thing is increased or diminished, and one thing even preferred to another, though the latter may seem to have an equal or greater use in human life. For in this matter the necessity of the thing, or its exalted usefulness, are so far from always holding the first place, that we rather see men hold in lowest esteem the things with which human life cannot dispense. And this because nature, not without the singular providence of God, pours forth a bountiful supply of them. Hence an increase of value tends to be produced especially by scarcity; and this is made much of when things are brought from distant parts. Hence love of display and luxury have placed enormous prices on many things with which human life could very comfortably dispense, for instance pearls and jewels. But for articles in everyday use prices are raised especially when their scarcity is combined with necessity or want. In the case of artificial commodities, scarcity apart, the price is chiefly raised by the fineness and elegance of the workmanship which they display, sometimes too by the fame of the artificer, also the difficulty of the work, the scarcity of artisans and workmen, and so forth. As for services and acts, difficulty enhances their price, as do also skill, utility, necessity, the 80
scarcity or rank or freedom of the agents, and finally even the reputation of the art, as being accounted noble or ignoble. The opposites of these things usually lower the price. Finally, at times a certain thing is highly rated, not by everybody, but by individuals, in consequence of a special affection, for example, because he from whom it came to us is made much of by us, and the thing was given to express his affection; or because we have grown accustomed to it, or it is a memorial of some great occurrence, or by its aid we have avoided a great danger, or it was made by our own hands. This is called sentimental value.

5. But in fixing the prices of single things, other matters too are usually considered. And among those who live together in natural freedom the values of single commodities are defined only by agreement of the contracting parties. For they are free to alienate or acquire what they please, and have no common master to regulate their dealings. In states, on the other hand, prices are deter-

mined in two ways: first, by decree of a superior, or by law; secondly, by the common estimate and judgment of men, that is, the custom of the market, with the consent also of the contracting parties. Some are in the habit of calling the former the legal price, the latter the common. When the legal price has been established in favor of the buyers, which is the more usual case, the sellers are not permitted to demand more. Yet, if they are willing to receive less, they are not forbidden to do so. Thus when the wages of laborers have been officially rated in favor of those who hire, the laborer may not demand more, but is not forbidden to receive less.

6. The common price, to be sure, not being fixed by law, admits a certain latitude, within which more or less can be, and usually is, given and received, according as the contracting parties have agreed. Generally, however, it follows the custom of the market. In this account is usually taken of the labor and expense ordinarily incurred by merchants in transporting and handling their wares; also of the manner of buying and selling, whether wholesale or retail.
81 And sometimes the common price is suddenly changed, according to the abundance or scarcity of purchasers, money, or wares. For scarcity of purchasers and money (due to some special reason), and also abundance of wares, diminish the price. On the other hand abundance of would-be-purchasers and of money, and scarcity of wares, raise the price. So too it tends to lower the price, if wares seek a purchaser. On the contrary the price is raised when the seller is actually besought, and will not sell otherwise. Finally this too is usually considered, whether a man offers ready money, or puts off payment for a time; since time also is a part of the price.

7. But after men departed from their primitive simplicity, and various kinds of gain were introduced, it was readily understood that common value alone was not sufficient for the transaction of men's affairs and their increasing dealings. For at that time dealings consisted in barter only, and the services of others were not to be had except by an exchange of service, or by surrendering something. But after we began to desire such a variety of things for convenience or pleasure, it certainly was not easy for every man to possess the things which another would wish to exchange for his own, or which were equal in value to the other's things. And in civilized states, where the citizens are marked off into different classes, there must necessarily be several classes that would be entirely unable to make a living, or scarcely able to do so, if the old-time simple exchange of commodities and services were still in vogue. Hence most nations, attracted by a richer mode of life, have seen fit by convention to impose a value *par excellence* upon a certain thing, in order that the common values of the other things might be tested by this, and virtually

contained in the same; so that by this medium one could acquire anything that is for sale, and engage conveniently in any sort of dealings and contracts.

8. For this purpose most nations have decided to employ the nobler and rarer metals. For they possess a very compact substance, so as not to be worn away easily in use, and also they admit of 82
division into many small pieces. And they are no less convenient to keep and handle, while on account of their rarity they can equal the value of many other things. Sometimes, however, from necessity, and, among some nations, from lack of metals, other things have been employed in place of coins.

9. Moreover, in states the right to define the value of a coin belongs to the highest authorities, and hence official markings are usually impressed upon the coin. In this determination of value, however, the general estimation of neighboring nations, or those with whom we have dealings, must be considered. For otherwise, if a state should set an excessive valuation upon its coins, or not properly alloy their material, it will put a serious check upon the commerce of its citizens with foreigners, at least as regards all that cannot be settled by mere barter. And for this very reason no rash change should be made in the value of coins, unless the extreme necessity of the state should require it. But, with the increase of gold and silver, by degrees the value of coins decreases as it were of itself, in comparison with the price of lands and anything depending thereon.

CHAPTER XV

On Contracts Which Presuppose the Prices of Things, and the Duties Thence Derived

1. An agreement in general is the consent and convention of two or more persons to the same purpose. But because frequently simple agreements are distinguished from contracts, the distinction seems to consist particularly in this, that we give the name of contracts to any such agreements as concern things or actions involved in trade, and hence presuppose ownership and prices. But such conventions as are entered into concerning other matters, are denoted
83 by the common term agreements. And yet, to some of these the terms agreement and contract are indifferently applied.

2. Contracts can be divided into the gratuitous and the onerous. The former bring some advantage gratis to one of the contracting parties, for example, a commission, a loan, a deposit; the latter bind both parties to an equal burden, for in these something is furnished or given, with the intent that an equivalent be received.

3. All onerous contracts, moreover, have this feature, that equality must be preserved in them, in other words, that each of the contracting parties make an equal gain; and where an inequality arises, the one who has received less acquires a right to demand that his lack be made good, or the contract be broken off entirely. This, however, is particularly the case in states, where prices are fixed by the usage of the market, or by law. But to find and determine this equality, it is required that the thing which is the subject of contract, together with its qualities, if they are of any importance here, be known to both of the contracting parties. Hence also he who is to transfer something to another by contract, must indicate not only its estimable qualities, but also a lack of the same, and defects. For without this a just price cannot be settled. Yet such circumstances as do not in themselves affect the thing, it is not necessary to indicate. And defects already known to both need not be indicated. And he who knowingly acquires anything defective, has himself to blame.

4. Moreover in contracts of this kind equality must be so far maintained, that an inequality discovered later must be corrected, even though there was no concealment, and no fault of the contracting parties, for instance, because a fault was not noticed, or a mistake

made in the price. And something must be taken from him who has more, and given to him who has less. Yet in order to avoid a mass of litigation, the civil laws give relief here in general only to very great injuries. For the rest they bid each man look out for his 84
own interests.

5. Gratuitous contracts are especially these three: commission, loan, and deposit. It is a commission when one undertakes for nothing the management of another's affairs, when the latter requests it, and intrusts the matter to the former. And this happens in two ways: so that the method of management is either prescribed or left to his judgment and skill. In this contract one must conduct himself with the highest honor and the greatest industry, since in general no one gives a commission except to a friend, and one of whom he has a high opinion. And so, on the other side, the trustee must be indemnified for expenses incurred in carrying out his commission, also for losses suffered in consequence of the same, and properly resulting from the affair committed to his charge.

6. It is a loan when we grant another the use of something of ours for nothing. In this one must take pains to keep and handle that same thing carefully and with the greatest diligence; and not apply it to other uses, or further than the lender permitted; and restore it uninjured, and just as it was received, except for what has been lost by ordinary use. But if it was loaned for a fixed time, and meantime the owner begins to have great need of it, owing to some chance not foreseen at the time of making the loan, it must, upon request, be restored to him, without subterfuge. If, however, the thing lent has perished by some chance cause unforeseen, without any blame on the part of the borrower, if it would have perished even in the possession of the owner, the estimated value need not be paid. Otherwise it seems fair that the borrower should pay the estimated value, since the owner would not have lost it, if he had not been generous toward the other. Vice versa, if any useful or necessary expense has been incurred for the thing lent, aside from what regularly attends the use of the thing, it must be refunded by the owner.

7. It is a deposit when we intrust to the honor of another a 85
thing that is ours, or concerns us in some way, that he may guard it for nothing. In this it is required that the thing intrusted be diligently guarded, and restored whenever it pleases the depositor; unless restitution would be injurious to the owner or others, and for that reason must be postponed. And it will not be permissible to use a thing deposited, except with the consent of the owner, if indeed it would in any way be the worse for use, or if it is to the owner's interest that it be not seen. And if a man has ventured to do so, he will make good any risks incurred in the use of the thing. Also it is not

permitted to take a thing deposited out of the wrappings or receptacles, in which it was inclosed by the depositor. Moreover, it would be a great disgrace and more shameful than theft, to deny a deposit; and it is far more disgraceful, to deny a deposit of charity, that is, something deposited in view of the danger of fire, the fall of a house, or a riot. On the other side, expenses incurred for a deposit must be refunded by the depositor.

8. Among the onerous contracts, about the most ancient, and that by which alone trading was carried on before the invention of money, is barter, in which each side gives a thing for a thing of equal value. Yet, even today, after the invention of money, there is a kind of barter particularly common among merchants, by which commodities are not simply compared with each other, but first appraised in money, and then turned over to their respective purchasers in place of money. But a different transaction from the contract of barter is a reciprocal donation, in which it is not necessary for equality to be observed.

9. Buying and selling is that by which, for a money consideration, ownership of a thing, or a right equivalent thereto, is acquired. Its simplest form is when the price is first agreed upon, and then the buyer at once offers and hands over the price, and the seller the commodity. Often, however, it is agreed that the commodity shall be at once delivered, but that the price is to be paid after a certain interval. Sometimes the price is agreed upon, but that the delivery of the property or commodity shall take place after a certain time.
86 In this it seems equitable that, before the expiration of that time, the property be at the risk of the seller. But if the buyer should delay after the time has elapsed, and not see to it that the property be delivered to him, it will henceforth be lost to the buyer. To the contract of buying and selling various agreements are commonly added; for example the *addictio in diem* [provisional sale], by which property is sold on such terms that the seller has the privilege of accepting a better offer from another party, if made within a certain time. There is also the *lex commissoria* [forfeiture clause], when it is agreed that, if at a certain date the price has not been paid, the property has not been bought. Also the *retractus* [recall], or an agreement to sell back again; which is so worded that if the price is not offered within a certain time, or at all, the buyer is bound to restore the property to the seller. Or the agreement may be that, if the property is offered to him, the seller shall be bound to restore the price; or that, if the buyer is going to sell again of his own motion, the former seller shall have precedence over all others in purchasing; and this is also called the right of refusal. So too, it is common for the seller to reserve a certain part of an estate he has sold, or a

certain use of that part. There is another kind of purchase which they call *per aversionem* [without inspection], when many things of unequal value are appraised not singly, but valued and bought at haphazard and in the lump. In that form of sale which we call auction, the thing is at last knocked down to that one of several bidders who has offered the most. Finally, there is a kind of purchase in which no definite thing is bought, but merely a probable hope. In this some hazard is involved, so that neither the buyer should complain, if the hope disappoints him, nor the seller, if it goes far beyond.

10. Letting and hiring is a contract by which the use of a thing, or services, are assigned to a man for pay. In this, while it is regularly customary to agree in advance upon the payment, still, if a man has assigned to another his services or the use of his property, without previous determination of the price, he is understood to expect as much as comports with common usage and the equity of him who hires. With regard to this contract, it is to be observed that, if the thing let has perished utterly, the person who hires is henceforth no longer held for payment or rent. But if the thing let has a certain and definite use, the owner is bound to guarantee 87
its fitness for that use; and correspondingly, if it suffers any damage, the hirer subtracts from his rent in proportion to the diminished usefulness of the thing. But if the property let has an uncertain yield, and contains an element of chance, an abundant crop is so much gain for the lessee, and in the same way a bad crop is his loss. And in strict law nothing is to be subtracted from the rent on account of that leanness, especially since the leanness of one year is usually balanced by the fatness of the next. Exception is made if the accidents which robbed him of his crop are very rare, and if the lessee is presumed not to have thought of taking that risk upon himself. For it is certainly fair that such accidents should have the effect of diminishing or remitting the rent. But just as the lessor is bound to put the thing itself into usable condition, and assume the necessary expenses, so the lessee must use it as a good householder, and restore whatever has been lost by his own fault. And he who has engaged to have some work done for him, makes it good in the same way, if the matter is spoiled by his own fault. If a man has let out to another his temporary services, and by any chance has been prevented from performing the same, he cannot claim his wages. But if one has hired the continuous services of another, and the man has become useless for service for a moderate length of time, owing to illness or other chance, it is inhuman for one either to remove him entirely from his situation, or to deduct from his compensation.

11. In the contract of *mutuum* [loan], a replaceable thing is given to a man, on the understanding that after an interval he is to

return the same kind in the same quantity and quality. And the things usually given in loan are called replaceable, i.e., admitting of being replaced in their kind, because anything of that kind can assume the rôle of another, so that, if one has received of the same kind, quantity, and quality, he is said to have received what he gave. Also, the same things are determined and specified by weight, number, and measure, from which point of view they are also commonly called quantities, as distinguished from specific commodities. A loan is
88 made moreover, either gratis, so that no more is received than was given, or else with some profit, which is called interest. And this is not repugnant to natural law, if indeed it be moderate, and in proportion to the gain which the other makes out of the money, or other loan, and to my loss, or cessation of profit, incurred by the absence of my property. Also if it be not exacted from the poor, for whom a loan takes the place of alms.

12. In the contract of partnership two or more persons contribute their money, property, or services to this end, that the resulting profits may be divided *pro rata* among them all; and that, if any loss is incurred, this in the same way is to be borne *pro rata* by each of them. In this partnership it is a duty to show honor and industry; and likewise one must not withdraw prematurely from the same to the detriment of a partner. But once the partnership has been dissolved, after subtraction of profit and loss, each receives as much as he put in. But in case one contributed money or property, the other services, we must consider the manner of that contribution. For, when the services of the one have to do only with handling the other's money or property, or selling for him, their shares in the profits are determined by the relation between the profit on the money, or property, and the value of the labor, and the safety or loss of the capital concerns only him who contributed it. But when the labor is spent upon the improvement of something contributed by the other, the first is understood to have a share in the thing also, in proportion to the extent of the improvement. But when men have entered into a partnership of their entire property, the several partners must faithfully contribute what they gain, and conversely they are supported out of the common stock, each according to his condition. But should the partnership be dissolved, the division of property would be in proportion to what each brought into the partnership in the beginning; and no questions are asked as to whose property produced the gain or loss to the partnership, unless it was otherwise agreed.

13. There are also a number of contracts which involve chance. Among these one may number wagers, in which one affirms, and the
89 other denies, the truth of some event not yet known to either, and a

certain sum is deposited on each side, to fall to that one with whose statement the event is found to agree. Here belong all kinds of games, in which there is competition for a prize. Among these, however, less hazard belongs to those which include a contest of wits, skill, adroitness, or strength. In some of them wits and chance display equal force. In others finally chance predominates. And it is incumbent upon the rulers of a state to consider how far the toleration of contracts of this sort is of advantage to the state or individuals. To this class belongs the raffle, i.e., when a number of persons buy something by a common contribution, and then decide by lot to which one of them the thing is to fall entire. Also the pot of fortune, or lottery, i.e., when a certain number of lots or small sheets, inscribed and blank, are thrown into an urn, and then one buys the privilege of drawing them out, so that he who does so receives that thing which the inscription names. Related to these contracts is insurance, or the contract of avoiding a risk and making the same good, by which a man, upon the receipt of a certain sum, takes upon himself and insures the risk which wares to be transported to other places are going to run, so that, if these happen to be lost, the insurer is bound to restore their value to the owner.

14. For the greater solidity and security of contracts sureties and pledges are frequently added. In the case of a surety, another man, who is thought suitable by the creditor, takes upon himself, as a kind of reserve, the obligation of the principal debtor, so that, if the latter does not pay, the other takes his place, with the understanding, however, that what he has spent must be refunded to him by the principal debtor. But, though the surety cannot be held to a larger sum than the principal debtor, it is not unreasonable for the former to be held more strictly to account than the latter, since more confidence was had in him than in the other. But naturally the principal debtor is to be called upon before the surety, unless the latter has taken the other's obligation entirely upon himself, in which case he is called an *expromissor* [promisor]. But if several have become sureties for one man, each is to be called upon merely *pro rata;* unless 90
one of them happens to be insolvent, or there is no opportunity to call upon him. For in that case the others will be burdened with his share.

15. Again, for the security of a loan, the creditor often has the debtor give or assign him some thing, called a pledge or mortgage, until the debt has been paid. The object of this is not only that the debtor may be urged to payment by the desire to recover his property, but also that the creditor may have at hand a source of payment. And for that reason pledges are regularly of a value equal to the debt itself, or greater. But the objects which are pledged are either pro-

ductive or unproductive. With regard to the former, it is common to add the contract of *antichresis* [reciprocal usage], i.e., that the creditor may gather the fruits of the pledge, in place of interest. With regard to the latter, the *lex commissoria* [forfeiture clause] is added, namely that the pledge is to fall to the creditor, if payment has not been made within a certain time. And this is naturally not unfair, when the pledge is not more valuable than the debt, plus the interest for the interval, or when it does exceed, the excess is restored to the owner. But, as the creditor must restore the pledge after payment, so in the meantime he is bound to take no less care of it than of his own possessions. And when there has been no contract of reciprocal usage, and the thing is of a kind to be worn out by use, or if the debtor's interests are in any way involved, the creditor cannot use the thing without his consent. A mortgage differs from a pledge in this, that the latter is constituted by delivery of the thing, while the former, as the thing is not delivered, consists in the bare assignment of something, especially something immovable, from which, in case of non-payment, the creditor can recover his loan.

16. What are the duties of contracting parties, however, is entirely clear from the purpose and nature of these contracts.

CHAPTER XVI

91

The Methods of Dissolving Obligations Arising from Agreements

1. Among the methods of dissolving obligations arising from agreements, and so of terminating the duties thence derived, the most natural is the fulfillment or payment of that in regard to which the agreement was made. Regularly it is the debtor who is bound to pay; but, if the amount is furnished by another in the name of the contractor of the obligation, this last is dissolved; provided it does not otherwise make a difference, by whom fulfillment is made. If, however, one pays for another with no intention to make him a present, one can recover from him the amount expended. Moreover, payment must be made to the creditor, or to a person whom he has delegated to receive the debt in his name. And finally one must perform or pay the very thing agreed upon (not something else in its place), entire, not mutilated, not a mere part, not divided, and at the place and time agreed upon. Yet the consideration of the creditor or the inability of the debtor may compel the former to put off the date of payment, or to split the amount into instalments, or even to accept one thing for another.

2. Obligations are also brought to an end by compensation, which is a balancing of credit and debit, that is, when a debtor is freed because the creditor himself evidently owes him something of the same kind and value. For, inasmuch as equality is identity, especially in things that are replaceable, and since, if the debt is mutual, I must immediately return the same amount that I have just received, therefore, in order to avoid useless payments, it is most convenient for each to make payment by retaining his own. It is evident, moreover, that compensation can be applied properly to replaceable things of the same sort, the time for whose payment is present or past; but not to other things, or performances of a different nature, unless they are both reduced to an estimate of their 92
value, that is, to money.

3. An obligation is further terminated by release or remission on the part of him to whom the debt was due, and whose interest it was to have the obligation fulfilled. This is brought about either expressly, by giving signs that indicate consent, for example, a

fictitious acknowledgment, restoring or destroying the papers; or else tacitly, as when one himself hinders the payment of the debt, or is responsible for such hindrance.

4. Obligations consisting in a performance on both sides are also commonly dissolved by mutual dissent, if nothing has yet been done, unless positive laws forbid. But when something has already been performed by the one party, a release must be given by him, or there must be some other adjustment.

5. Moreover, an obligation is not so much dissolved as broken off by the treachery of one party or the other. For when one does not perform what was agreed, the other is not bound to perform what he undertook in view of such performance. For in agreements the items of things to be performed are implied as a condition in the subsequent items, as if one had said, "I shall perform this, if you first perform that."

6. Obligations also expire when the status, upon which alone they depended at the time, has been changed either by him who was bound to perform, or by him to whom performance was due.

7. By time itself obligations expire, if their duration was dependent upon some point of time, unless that duration shall have been extended by express or tacit agreement of the parties. But the power to demand fulfillment of the obligation must have existed during that period.

8. Finally, obligations which have their roots in a man's person are dissolved by death. For the subject having been taken away, the accidents also must be extinguished. But often an obligation is continued in the survivors of deceased persons, and this either be-
93 cause the survivor out of pious duty, or for other reasons, has taken upon himself to fulfill the obligations of the deceased; or else because the obligation must be satisfied out of the possessions of the deceased, which have passed with that burden to the heir.

9. By substitution, one presents, with the consent of the creditor, one's own debtor, that he may pay the debt instead of one's self. In this indeed the creditor's consent is required, but not that of that third person, whom I can assign, even without his knowledge and consent, to the other, if he is willing. For it makes no difference to which of the two one pays, but a great difference from whom one demands the payment of a debt.

CHAPTER XVII

On Interpretation

1. It is indeed true that in matters enjoined by authority, a man is not bound beyond the intention of that authority, and that in matters to which he elects to bind himself, he is not bound beyond what was his own intention. And yet as one cannot judge of another's intention, except from actions and signs that impress the senses, a man is consequently considered in a human court as bound only to that which a sound interpretation of those indications suggests. Hence, for a right understanding of laws, as well as of agreements, and for the performance of the duty involved, it is of the greatest importance to establish rules of sound interpretation, for words especially, as the commonest sign.

2. With regard to ordinary terms this is the rule: words are regularly to be interpreted in their proper and well-known signification, imposed upon them not so much by propriety or grammatical analogy or consistency with derivation, as by popular usage,

> "to whom belongs
> The rule, the law, the government of tongues." [1]

3. Terms of the arts are to be explained according to the definitions of men versed in the particular art. But if technical terms 94
are differently defined by different persons, expressing in ordinary terms what we mean by the other word makes for the prevention of suits.

4. Conjectures too are needed, to draw out the real meaning, if either single words or a group of words are ambiguous; or if some parts of a discourse *seem* to contradict each other, yet so that by applying a skillful explanation they can be reconciled. Where the contradiction is certain and evident, the later statement will annul the earlier ones.

5. Conjectures concerning intention and the proper meaning in an ambiguous and intricate discourse are drawn from the subject-matter, from the effect, and from related statements. With regard to the matter this is the rule: words are to be regularly understood

[1] [Conington's translation of HORACE, *Ars Poetica*, 72.]

according to the subject-matter. For the speaker is always presumed to have in view the matter of which he was speaking; and hence the meaning of his words is always to be adapted to the same.

6. As for the effect and consequences, this is the rule: when words, simply and literally taken, would entail either no effect, or an absurd one, there must be a slight departure from the commonly received meaning, in so far as the necessity of avoiding the meaningless or the absurd requires.

7. From related statements are derived the strongest conjectures; for a man is presumed to be consistent. Statements are related, locally speaking, or merely as regards their origin. For the former this is the rule: if in some passage of the same discourse the meaning has been plainly and clearly expressed, obscurer wordings are to be interpreted by the plain expressions. Related to this is another rule: in the accurate interpretation of every discourse one must give attention to the preceding and following statements, to which the intervening are presumed to adapt themselves and correspond. For the latter kind of statement this rule is observed: an obscure expression of one and the same man is to be interpreted by his own clearer expres-
95 sions, though manifested at a different time and place; unless it is quite plain that he has changed his mind.

8. It is also of the greatest advantage to a search for the true meaning, particularly in the case of laws, to examine the reason for the law, or that cause and consideration which moved the lawgiver to make this law, especially when it is evident that this was the one reason for the law. For this we have the rule: the interpretation of a law which agrees with the reason for its passage must be followed, and that which differs from the same must in turn be rejected. Also, when the one adequate reason for a law ceases, the law itself ceases. But when there were several reasons for the same law, it does not at once cease entirely with one of these, since the remaining reasons may suffice to sustain the force of the law. Often, too, the mere will of the lawgiver is sufficient, though the reason for the law may be unknown.

9. We must observe, besides, that many words have more than one signification, a looser, and a stricter sense: also that the content is now favorable, now invidious, now indifferent. The favorable is that which makes equal terms for both parties, or regards the common advantage, or maintains any formal acts, or promotes peace, etc. Invidious is whatever burdens one party only, or one more than the other, or carries with it a penalty, or nullifies an act, or changes existing conditions, or promotes war. Indifferent is, for example, anything that does indeed change existing conditions, but in the interest of peace. For these this is the rule: the favorable is to be interpreted more broadly, the invidious more strictly.

10. From other sources than words there are also conjectures, which have this effect, that an interpretation is sometimes to be broadened, sometimes to be narrowed. Yet one may more easily find reasons which persuade one to narrow an interpretation, than to enlarge it. The law, then, can be extended to a case not mentioned in it, if it is established that a reason which fits the present case was the only one which influenced the lawgiver, and was considered by him in its general bearing, and in such a way as to include similar 96
cases as well. A law must also be extended to meet those cases which are devised by the evil ingenuity of men, in order to outwit the law.

11. On the other hand, the restriction of words expressed in general terms occurs either from an original defect of intention, or from a conflict between a case that arises and the intention. That a man is presumed not to have desired a thing from the beginning is understood (1) from an absurdity which would otherwise follow; and this no man of sound mind is thought to have desired. Hence general terms are to be restricted, in so far as otherwise an absurdity would result from them. (2) From the absence of that reason which alone prompted the man's will. Hence, under a general expression, cases with which the one adequate reason for the law does not square, are not included. (3) From the absence of the subject-matter, which the speaker is always thought to have had in mind. Hence general terms are always to be adapted to that same matter.

12. But the fact that a case subsequently arising conflicts with the intention of him who made some disposition, is discovered either from the natural reason, or from some sign of his intention. The former happens, if a departure from equity would be unavoidable, unless certain cases were excepted from the general law. For equity is the correction of that in which the law fails on account of its universality. For since not all cases can be foreseen, or stated, on account of their infinite variety, therefore, when general terms are to be applied to special cases, we must except those cases which the lawgiver would have excepted, if he had been consulted in regard to such a case. But it is not permitted to have recourse to this equity, unless sufficient indications compel us so to do. The most certain of these is this: if it should appear, that the natural law would be violated, in case one wished to follow strictly the letter of the human law. Next in importance: if it be not indeed unlawful to follow the letter of the law, but still, in a humane view of the matter, it seem too severe and intolerable, whether for all men in general, or for certain persons; or if the end appear not worth buying at so high a price.

13. Finally, exception must be made to a general expression, if 97
words found elsewhere do not indeed directly conflict with the present

law or agreement, but on account of a certain element in the situation cannot be observed at the same time, here and now. Here, then, there are certain rules to be observed, so that we can understand what law ought to be preferred, in case both cannot at the same time be satisfied: (1) What is merely permitted, gives way to what is commanded. (2) What must be done at a certain time, is preferred to what can be done at any time. (3) An affirmative precept gives way to a negative. Or when an affirmative precept cannot be met, without violating the negative, the fulfillment of the former must be omitted for the present. (4) As between conventions and laws otherwise equal, the special is preferred to the general. (5) As between two performances, which at a particular moment conflict, one of them having more honorable or useful reasons than the other, it is proper for the latter to give way to the former. (6) An agreement without oath yields to one with an oath, when both cannot be satisfied at the same time. (7) An imperfect obligation yields to the perfect. (8) The law of beneficence, other things being equal, yields to the law of gratitude.

THE SECOND BOOK 98

ON

THE DUTY OF MAN AND CITIZEN

BY

SAMUEL VON PUFENDORF

CHAPTER I

On the Natural State of Men

1. We have next to inquire about those duties whose performance is incumbent upon a man, in view of the particular state in which we find him living the common life. And by state I mean in general that condition in which men are understood to be placed, for the exercise of a certain kind of actions. Special rights also generally accompany that state.

2. The state of men is either natural or adventitious. The natural state can be considered under three heads, so far as mere reason lights the way; either in relation to God the Creator, or in relation to individual men, as regards themselves, or as regards other men.

3. Viewed in the first way, the natural state of man is that condition in which he was placed by the Creator, when He willed that man should be an animal superior to all the rest. From this state it follows that man should recognize and worship his Author, and marvel at His works; and also pass his life in a very different manner from the brutes. Hence this state is contrasted with the life and 99
condition of the brutes.

4. In the second way we can consider the natural state of man, if we imagine what his condition would be, if one were left entirely to himself, without any added support from other men, assuming indeed that condition of human nature which is found at present. Certainly it would seem to have been more wretched than that of any wild beast, if we take into account with what weakness man goes forth into this world, to perish at once, but for the help of others; and how rude a life each would lead, if he had nothing more than what he owed to his own strength and ingenuity. On the contrary, it is altogether due to the aid of other men, that out of such feebleness we have been able to grow up, that we now enjoy untold comforts, and that we improve mind and body for our own advantage and that of others. And in this sense the natural state is opposed to a life improved by the industry of men.

5. In the third way we consider the natural state of man according as men are understood to be related to each other, merely from that common kinship which results from similarity of nature, before

any agreement or act of man, by which one came to be particularly bound to another. In this sense we speak of men as living together in the natural state, if they have no common master, and one is not subject to the other, and they are not known to each other by kindness or injury. In this sense the natural state is opposed to the civil state.

6. Again, the character of this natural state can be considered either as it is represented by a figment, or as it really exists. We have the former, if we conceive that from the beginning a multitude of men came into being at once, without any interdependence, as the story of the Cadmean brothers has it; or else, if we imagine the whole human race as now so broken up, that each man would
100 govern himself apart, and none be bound to any by other bond than similarity of nature. But the state of nature which really exists, has this feature, that one is joined to some men by a special alliance, but with all the others has nothing in common except one's humanity, and owes them nothing on any other account. Such a condition now exists between different states, and between the citizens of different nations, and formerly it obtained among the scattered patriarchs.

7. For it is clear that the whole human race has never at one and the same time been in the natural state. For those who were born to our first parents, from whom all mortals draw their origin, as the Holy Scriptures relate, were subject to the paternal authority. Later, however, this natural state did appear among some men. For the first men, in order to fill a world still empty, and to seek a roomier habitation for themselves and their flocks, left the paternal homes, separated in different directions, and nearly every male set up a household for himself. Among their descendants, who scattered in the same way, the special bond of kinship, and the affection springing from it, gradually vanished, and there remained only that community which results from a like nature; until later, when the race had multiplied remarkably, and they had discovered the inconvenience of the isolated life, by degrees the nearest neighbors united to form societies, first smaller, then larger, by the voluntary or enforced union of several of the smaller. Between these communities, as they are joined by no other bond than that of common humanity, the natural state certainly still exists.

8. Now those who live in the natural state have this particular right, that they are subject and responsible to none but God. From which standpoint that state is called natural liberty; by which, unless there has been some previous act of man, everyone is understood to be his own master, and subject to the authority of no man. And from
101 the same standpoint each is accounted equal to every other, and neither is subject to him, nor holds him in subjection to himself.

Moreover, since the light of reason has been placed in man, and, by its beams he can guide his actions, it follows that every man living in natural liberty depends upon no one for the regulation of his conduct; but, in accordance with his own judgment and will, has the power of doing everything that agrees with sound reason. And on account of the common inclination, implanted in all creatures, a man can but endeavor by every means to preserve his body and his life, and to banish what seems to destroy life, and must employ the means to that end. For this reason, and because in the natural state no one has another man as his superior, to whom he has submitted his own will and judgment, therefore in that state every one of his own judgment determines the fitness of means, and whether they conduce to self-preservation or not. For, no matter how much he hears the advice of another, it is none the less in his own power to decide whether he wishes to approve of the other's advice or not. But that this self-government be rightly conducted, it is required that it be undertaken according to the dictate of right reason and the natural law.

9. However much the natural state allures by the name of freedom and immunity from all subjection, still, until men have united into communities, it has many added disadvantages, whether we imagine all men as existing singly in that state, or consider the situation of the scattered patriarchs. For if you conceive a man who even in adult age is left alone in this world, and without any of the comforts and supports with which the ingenuity of men has made life more civilized and less hard, you will see an animal, naked, dumb, needy, driving away his hunger as best he can by roots and herbs, his thirst by any water he chances upon, the severity of the weather by caves, an animal exposed to the wild beasts, and alarmed when he meets any of them. A life somewhat more civilized was possible among those who lived in scattered families,—a life, however, which could not be compared in any way with civil life, not so much on account of want, 102
which the household, with its limited desires, seems fairly well able to banish, as because security is not fully provided for there. And, to be brief, in the natural state each man is protected by his own powers only, in the community by those of all. In the former no one has a certain reward of his industry; in the latter all have it. In the one there is the rule of passion, war, fear, poverty, ugliness, solitude, barbarism, ignorance, savagery; in the other the rule of reason, peace, security, riches, beauty, society, refinement, knowledge, good will.

10. Moreover in the natural state, if a man does not willingly perform for another what he ought under an agreement, or if he has injured him, or if some controversy arises otherwise, there is no one who by authority can compel the other to perform what he ought, or

repair the injury, and can thus settle the quarrel, as in states, where one may implore the aid of a common judge. But because Nature does not permit us to go to war for any cause indifferently, even where one is amply persuaded of the justice of one's cause, therefore we must first try to see whether the matter can be adjusted in a gentler way, namely, by a friendly discussion between the parties, and by a pure (not conditionate) compromise, that is, an appeal to arbiters. These arbiters should conduct themselves with fairness to both sides, and in giving their decision make no concession to hatred or favor, but regard solely the merits of the case. For this reason a man is not usually taken as arbiter in a case in which there appears to be greater hope of advantage or special distinction for himself from the success of the one side, than from that of the other, and so where it is to his interest that one of them win the case by whatever means. Hence also there should be no agreement or promise between the arbiter and the parties, by virtue of which he may be bound to pronounce in favor of the one. And if the arbiter is unable to find out what the fact is, either from the common confession of the parties, or definite instruments, or unmistakable arguments and signs, he will be obliged to find it out from the depositions of the witnesses. These may indeed be constrained to tell the truth by the natural law, and generally by
103 the sanctity of an oath, still it would be safest not to admit such persons as are so disposed towards one or the other of the parties that their conscience must struggle as it were with favor, hatred, lust for revenge, and other violent passion, or even some very close tie,—motives which not all have firmness enough to conquer. Sometimes, too, quarrels are ended by interposition of common friends, and this is with good reason accounted one of the most sacred duties. But as for the performance, in this state, that is each man's affair, when the other does not voluntarily fulfill his obligation.

11. Again, although it was the will of Nature herself that there should be a certain kinship between men, and that, by virtue of this, it should be wrong for one to injure another, and—better still—right for every man to spend himself for the advantage of others, nevertheless among those who live together in natural liberty this kinship generally exerts a very feeble force. Hence any man who is not our fellow-citizen, or one with whom we live in the natural state, is to be regarded, not indeed as an enemy, but still as an inconstant friend. The reason for this is that men are not only perfectly able to injure each other, but for various reasons very often willing to do so. For in some cases perversity of nature, or the passion for ruling and possessing superfluities, spurs men on to injure others. Other men, though of modest temper, rush to arms in the desire to preserve themselves, and not to be anticipated by others. Many are

matched against each other by desire for the same thing, others by a rivalry of talent. Hence in this state suspicions all but perpetual are rife, as are distrust, the desire to undermine the strength of others, the passion for getting ahead of others, or of strengthening one's self by the ruin of others. Therefore, as it is the part of the good man to be content with what he has, and not to attack others, nor seek their property, so the cautious man who is devoted to his own welfare, believes all men his friends, with the possibility, however, of presently becoming his enemies, and keeps the peace with all, as something which can presently change into war. For this reason also happy is that state regarded which even in peace thinks of war.

CHAPTER II

On Conjugal Duties

1. Among the adventitious states, or those in which a man is placed by some previous act of man, the first place belongs to marriage. In itself it is also the first example, we may say, of the social life, and at the same time the nursery of the human race.

2. This much is certain to begin with, that the ardent and mutual propensity of the sexes was ordained by an all-wise Creator, not for the satisfaction of an empty pleasure (for this, if it were the only aim, would have occasioned the greatest filthiness and confusion in the human race), but in order that the life of married persons might be the more agreeable, and that mankind might the more willingly devote itself to the propagation of offspring, and endure the annoyances which attend the begetting and rearing of the same. From which it follows that every use of the genital organs which departs from these purposes is repugnant to the natural law. On this account lust after another species, or the same sex, is forbidden; also any filthy pollutions, and finally all intercourse outside of wedlock, whether by mutual consent, or forced upon the unwilling woman.

3. The obligation to contract marriage can be considered either in respect to the whole human race, or in respect to individuals. The former obligation consists in this, that the propagation of the human species is by no means to be carried on by promiscuous and unregulated intercourse, but must be bounded certainly by conjugal laws, and so conducted by marriage only. For without the latter, a seemly and well-ordered society of men, and the practice of the civil life are inintelligible. As for the individuals, they are bound to enter matrimony when a convenient opportunity therefor offers. This, however, consists not only in age and generative power, but that there be also the possibility of a suitable match, and the means to support a wife and the children to be born, and then that the man be suited to play the rôle of a paterfamilias. Unless, however, a man has the temperament for a chaste single life, and feels that as a celibate he can accomplish more good for the race or the state, than if he had a wife; especially when no dearth of offspring is to be feared.

4. Between those who are about to enter matrimony there should be, and usually is, an agreement, which in its regular and perfect form consists of these heads: First, because the man (for it is in

harmony with the nature of both sexes that the contract begin with him) intends to seek offspring of his very own, not supposititious nor spurious, therefore the woman must give the man her promise that she will give none but himself the use of her person. And in like manner the woman in turn requires the same stipulation of the husband. Next, as nothing is more out of keeping with the nature of the social and civil life, than a wandering and unsettled life, without a definite home and abiding-place for the property; and as the bringing-up of the common offspring is most conveniently carried on when both parents unite their efforts; and since continuous cohabitation involves the greatest amount of pleasure to the well-mated, and thereby the husband can also have more certain knowledge of his wife's chastity; therefore the wife gives the husband the further promise, that she will dwell with him continuously, and in fact unite with him in closest society of life, and in the same family. And in this we understand that there is contained a mutual promise of such a life together, as the nature of that alliance requires. But it agrees best with the natural condition of both sexes, not only that in marriage the condition of the man should be the better, but also that the husband be the head of the household which he has himself established. From this it follows that in matters relating to marriage and the household the wife is subject to the husband's direction. Hence also it belongs to the husband to determine the home, and the wife cannot against his will go abroad, or sleep alone. But it does not seem necessary to the essence of matrimony to have such 106
authority as includes the power of life and death, and severe punishment, also the full power of disposing of any property of the wife. This, however, is in some places established by special contracts between the couple, or by the civil laws.

5. Moreover, though it is manifestly repugnant to the natural law that one woman should cohabit with several men at the same time, still, for one man to have two or more wives has been customary in many nations, and formerly even in the Jewish people. Nevertheless, even disregarding the primitive institution of marriage as related in the Holy Scriptures, it is, however, established by right reason alone, that it is far more seemly and advantageous for one man to be content with one woman. And this is what the experience of all the Christian nations that we know of has approved these many centuries.

6. And no less does the nature of so close a union show that marriage ought to be perpetual, and not to be terminated, except by the death of one or the other of the couple; unless the clauses of the original marriage contract have been violated by adultery and base desertion. But for incompatibility of character, not having the

same effect as base desertion, a separation merely as regards bed and board has been admitted among Christians, without permission to proceed to a second matrimonial engagement. Among the other reasons therefor is this, that facility of divorce may not foster perversity of character; but rather that despair of another match may encourage husbands and wives to an obliging disposition and mutual tolerance. But for violation of the clauses of the marriage contract the injured party only is released from the tie, which is continued in the case of the other, if indeed the injured party shall so wish, and shall deign to be reconciled.

7. Marriage can be contracted lawfully, where the civil law does not prohibit, by any man with any woman, if they have the age and physical condition suitable for marriage, unless some moral impedi-
107 ment prohibits. Morally one is prevented from taking another partner, if one is already joined to a husband or wife.

8. But also a moral impediment to legal matrimony is found in a too close relationship of blood or affinity. On this account, even under the natural law, marriage between ascendants and descendants indefinitely is judged sinful. And other marriages on the transverse line, for instance, with a father's or mother's sister, or with a sister, and likewise among relations by marriage, with a step-mother, mother-in-law, step-daughter,—all these are viewed with aversion not only by the divine law, but also by the laws of civilized nations, and the consensus of Christians. For that matter, the civil laws of many peoples have forbidden some remoter degrees, to hedge about, as it were, the more sacred degrees above mentioned, that men may not readily rush in to desecrate them.

9. But, as the civil laws are accustomed to add to other contracts and affairs certain requisites, and if these have not been observed, those are not held valid in the civil court, so it is also with marriage, so long as certain solemnities are anywhere required by the civil laws in the interest of seemliness and good order. Although these are outside of the natural law, still, without them, those who are subject to the civil laws will not contract a legal marriage; or at least such a union will not have the effect of a proper marriage in the state.

10. The duty of the husband is to love the wife, to support, rule, and defend her; of the wife, to love and honor her husband, to be a help to him, not only in the generation and education of children, but also in assuming a part of the domestic cares. On both sides the character of so close a union requires that both be sharers as well in prosperity as in adversity, and that, if any misfortune befalls one of them, this partner be sustained by the other; and not less that they wisely adapt their ways to maintain mutual harmony. Yet in this matter it is rather the part of the wife to yield.

CHAPTER III

On the Duties of Parents and Children

1. From marriage spring children, over whom paternal authority has been established,—the most ancient and at the same time the most sacred kind of rule, under which children are bound to respect the commands and recognize the superiority of parents.

2. The authority of parents over their children arises from two main causes: first, because the natural law itself, in commanding man to be social, enjoined upon parents the care of their children; and that this might not be neglected, Nature at the same time implanted in them the tenderest affection for their offspring. For the exercise of that care there is needed the power to direct the actions of children for their own welfare, which they do not yet understand themselves, owing to their lack of judgment. And then that authority rests upon the tacit consent also of the offspring. For it is rightly presumed that, if an infant had had the use of reason at the time of its birth, and had seen that it could not save its life without the parents' care and the authority therewith connected, it would gladly have consented to it, and would in turn have made an agreement with them for a suitable bringing-up. Actually, however, the parents' authority over their offspring is established when they take up the child and nurture it, and undertake to form it, to the best of their ability, into a fit member of human society.

3. But although the mother contributes no less than the father, to the production of children, and so, physically speaking, the offspring is common to both, we must inquire which of them has the better right to the children. And in this one must make a distinction. For if the child has been born out of wedlock, it will be originally the mother's, because in this case the father can be known only by the mother's testimony. Also among those who live in natural liberty and above civil laws, it can be arranged by agreement that the mother, not the father, have the better right. But in states, which were, of course, established by men, inasmuch as marriage contracts regularly begin with the father, and he is the head of the household, the father will have the better right. Consequently though a child naturally owes its mother respect and gratitude, it is nevertheless not bound by the commands of the mother,—those at least which conflict with the just instructions of the father. But upon the death of the

father, his right to his offspring, the non-adult at any rate, seems to be acquired by the mother, and, in case she enters a second marriage, by the stepfather, since indeed he succeeds to the responsibility and care of the natural father. And one who undertakes the liberal education of a deserted child or orphan, can of his own right exact filial respect from him.

4. But accurately to understand how great is the power of parents over their children, we must first distinguish between the scattered patriarchs, and those who have entered a community; and then between the power which the father has as such, and what he has as head of his household. Upon the father as such nature has enjoined that he bring up his children well, that they may turn out fit members of human society, up to the time when they are able to look out for themselves. Therefore so much authority is understood to have been granted him, as suffices for this purpose. But it by no means goes so far that parents can destroy their offspring in the mother's womb, or after birth expose or kill it. For while progeny is called into being out of the substance of parents, the result, however, is to place it in the same human lot as themselves, and to make it capable of suffering an injury even from the parents. Also this power is not thought to extend to exercising the right of life and death on occasion of some offense, but merely so far as moderate chastisement. For this has to do with a tender age, at which crimes so black as to be expiated by death scarcely occur. But should a child persistently spurn all discipline, with no hope of improvement, he can be driven from the paternal home and disowned.

5. Moreover this power, thus narrowly interpreted, can be con-
110 sidered according to the different ages of the children. For in the first years, when the use of reason is still immature, all the children's actions are subject to the parents' direction. In this period, if any property is transferred by others to the minor, the parent must accept and administer it in place of the son, yet so that the ownership is acquired by the son himself. It is, however, most equitable that the income should fall to the father, until the son comes of age. So, too, whatever gain or profit comes by the labor of the son, is rightly claimed by the father, on whom rests the burden also of nourishing and educating the son.

6. In adult years, when the children have indeed mature judgment, but are still a part of the paternal household, we can distinguish the authority which the father has as father, from that which he has as head of the household. Since the former kind has for its aim the proper education and guidance of the children, it is clear that even adult children ought to follow the authority of parents, as the wiser persons. And he who wishes to be supported out of the paternal prop-

erty, and in turn to succeed to it, must adjust himself to the circumstances of the father's household, for the control of the latter is unquestionably in the hands of the father.

7. But the patriarchs, who had not yet entered into communities, wielded in their homes an authority like that of princes. Hence their children too, still remaining in the household, were bound to respect their authority as the highest. But later this household rule, and other rights as well, were limited to suit the needs and proprieties of communities; and in one much of their authority was left to fathers, in another little. Hence we observe that in some states fathers had the right of life and death over their children, to be exercised in case of crime; and that in others the same right was taken away, that parents might not abuse their authority over their children to the detriment of the public good, or to oppress them unjustly; or for fear the tender affection of a parent might conceal vices which would break out into public calamity; or else to avoid imposing upon a father the necessity of pronouncing so stern a sentence.

8. But when a child has clearly departed from the paternal 111
household, and either established a new household of his own, or attached himself to another, the paternal authority is indeed dissolved, but so, however, that the debt of dutifulness and respect always remains, as something founded upon the merits of the parents, which children are never, or very rarely, thought fully to requite. And those merits consist not only in the fact that children owe to parents their lives, the occasion of all blessings, but also because they undertook their laborious and costly education, by which they have molded them into fit members of human society, and often have provided them with the means of passing their lives in comfort and abundance.

9. But, although the obligation to educate their children has been imposed upon parents by nature, this does not prevent the direction of the same from being intrusted to another, if the advantage or need of the child require, with the understanding, however, that the parent reserves to himself the oversight of the person so delegated. Hence also a father has not only the right to intrust the instruction of a son to suitable teachers, but can also give the son in adoption to another, if indeed any advantage is to be thus gained for the son. And if he has no other means of supporting his child, rather than let him die of want, the father can pledge the child, or sell him into a slavery that is endurable, at least subject to reconsideration, when the father shall come into more favorable circumstances, or some relative is willing to ransom the child. But if a parent has inhumanly exposed or cast off a child, whoever shall take up and educate the child, will succeed also to the father's rights, so

that the foster-child owes filial respect to the man who has brought him up.

10. Again, as a father ought not, except for the weightiest reasons, to drive a child from his household, while still needing education and his assistance, so also the child will not go forth from the father's household except with his permission. But, since it is usually on contracting a marriage that children leave the paternal household, and it is certainly a concern of parents, who is to be
112 united to their children, and by whom they are themselves to have grandchildren, therefore filial duty plainly requires that children in this matter follow the consent of the father, and be not united in marriage against his will. But if children have in fact contracted and consummated a marriage against the parents' will, it does not seem to be void according to the natural law, especially where they do not wish to burden the father's household longer, and the match is not otherwise improper. Hence, if such marriages are anywhere accounted void or illegitimate, it is due to the civil laws.

11. The duty of parents consists chiefly in this, that they support their children in comfort, and so shape their body and mind by skillful and wise education, that they become fit and useful members of human and civil society, good, wise, and men of character. Also to introduce them to a suitable and honorable occupation; and, so far as reason and opportunity permit, to establish and promote their fortunes.

12. The children's duty on the other hand is to honor their parents, that is, to show them respect, not by outward signs alone, but much more in the inward estimation, as authors of their lives and other great benefits; to obey them, serve them to the best of one's ability, especially when they are weakened by age or want; to undertake nothing of great importance without their counsel and authorization; and finally patiently to bear their peevishness or faults, if any are discovered.

CHAPTER IV

On the Duties of Masters and Servants

1. After the human race had begun to multiply, and it had been discovered how conveniently the affairs of the household can be cared for by the service of others, it soon came to be the practice to admit slaves into the household, to perform the domestic tasks. 113
And it is probable that in the beginning these offered themselves voluntarily, being compelled by want or a sense of their own incapacity; and that they bargained for a perpetual supply of food and other necessaries, and so assigned their services to the master permanently. Then, as wars became widespread, it came to be the custom of many peoples, that those whose lives they had spared after capture in war should be consigned to slavery, together with the offspring which should thereafter be born to them. And yet among many peoples no such slavery is in vogue, but all the domestic tasks are performed by hired servants engaged for a time.

2. Moreover, as there are different degrees of slavery, so also the power of the masters and the lot of the slaves vary. To a servant hired for a time the master owes the wage agreed upon; and the former in turn owes the latter the service agreed upon. And since in this contract the social lot of the master is the better, therefore the servant of this kind also is bound to show his master respect in proportion to his rank; and if he has done his work with ill-will or neglect, he is liable to the master's correction. This cannot go so far, however, as to inflict by his own authority serious bodily harm, much less death.

3. But in case of the slave who has voluntarily assigned himself to a man in perpetual slavery, the master owes him a constant supply of food and the other things necessary to life; and the slave in turn is bound to perform continual service, whatever the master has prescribed, and to make over faithfully to the master whatever is yielded by his services. In these, however, the master will humanely take account of the slave's strength and skill, not to exact harshly a labor which exceeds his strength. The slave is also subject to the chastisement of the master, not only to banish carelessness in the performance of his task, but also that his habits may be in harmony with the repute and the peace of the household. However such a slave cannot be sold to another against his will; for he has of his own motion chosen this master, and not another, and it makes a

difference to him which he serves. If he has committed a serious crime against one outside the household, he is subject to the punish-
114 ment of the civil authority, if in a state; if in an isolated household, he can be driven out of it. But where the crime has been committed against the isolated household itself, he can be punished by his master even with extreme measures.

4. But the slaves who had been captured in war have been harshly treated in the beginning by most masters, because something of the anger of an enemy remained in their case, and also they had themselves threatened the worst to us and our property. As soon, however, as mutual confidence has been reached between the victor and the vanquished in such a case, with regard to the slave's admission to the household, all previous hostility is understood to have been forgiven. And then a master undoubtedly wrongs a slave, acquired even in this way, either if he does not supply the necessaries of life, or if he is unreasonably harsh towards him, and much more so, if he kills him when not guilty of a crime that deserves it.

5. With regard to slaves who were carried off into that condition by force in war, and those also who are purchased, it is the accepted practice that they can be transferred, like our other possessions, to anyone we please, and sold like chattels. Hence even the body of the slave is understood to belong to the master. Here, however, humanity bids us never forget that a slave is a man for all that; and so to treat him by no means as we do our other possessions, which we can use, abuse, and destroy at our discretion. And when one decides to dispose of such a slave, he should not be deliberately or undeservedly assigned to those under whom an inhuman treatment will await him.

6. Finally it is also the generally accepted custom, that offspring born of slave parents should share their servile estate, and belong as a slave to the mother's owner. It is defended by this argument: that it is right for the fruit of the body to belong to him who owns the body. Also because such offspring would clearly not have been born, if the owner had exercised the right of war upon the parent. And also, since the parent has nothing of her own, she has no way left her to support such offspring except out of the master's property.
115 Therefore, since the master provides nourishment for a child of this kind long before its service can be useful, and the subsequent services do not generally much exceed the cost of nourishment at the time, it will not be permissible to escape from slavery against the master's will. But it is manifest that, as such slaves born in the home come into slavery through no fault of their own, there is no pretext for treating them more harshly than the lot of perpetual hirelings admits.

CHAPTER V

On the Impelling Cause for the Establishment of a State

1. Although there is scarcely any pleasure and advantage which it seems cannot be obtained by the duties and situations so far enumerated, it remains for us to investigate the question, why men nevertheless, not content with those little first societies, have established the great societies which go by the names of states. For it is from these foundations that we must deduce the reason for the duties which attend the civil status of men.

2. Here then it is not enough to say that man is by Nature herself drawn into civil society, so that without it he cannot and will not live. For surely it is evident that man is an animal of the kind that loves itself and its interest to the utmost degree. When, therefore, he voluntarily seeks civil society, it must be that he has had regard to some utility which he will derive from it for himself. And though, outside of society with his kind, man would have been much the most miserable of creatures, still the natural desires and necessities of man could have been abundantly satisfied through the first communities, and the duties performed out of humanity or by agreement. Hence it cannot at once be inferred from man's sociability 116
that his nature does tend exactly to civil society.

3. This will be clearer, if we consider what condition arises among men from the establishment of states; what is required, if one is to be truly called a political animal, that is, a good citizen; and finally what in man's nature is found to conflict with the character of the civil life.

4. The man who becomes a citizen suffers a loss of natural liberty, and subjects himself to an authority which includes the right of life and death,—an authority at whose command one must do many things from which one would otherwise shrink, and must leave undone many things which one greatly desired to do. And then many actions must be referred to the good of society, which often conflicts with the good of individuals. And yet, by tendencies already inborn, man does not incline to be subject to anyone, but to do everything at his own pleasure, and to favor his own interest in all things.

5. We call a man a truly political animal, that is, a good citizen, if he promptly obeys the commands of the rulers, if he strives with all his might for the public good, and willingly subordinates thereto

his private good, or rather if he thinks nothing good for himself, unless it is likewise good for the state too; and finally if he shows himself accommodating to the other citizens. Yet few men's natures are found to be of themselves adapted to this end. The majority are restrained somehow by the fear of punishment. Many remain all their lives bad citizens and non-political animals.

6. Finally, no animal is fiercer or more untameable than man, and more prone to vices capable of disturbing the peace of society. For, besides the craving for food and love, to which the brutes too are commonly addicted, man is troubled by many vices unknown to the brutes, for example, the insatiable desire for things superfluous and that worst of evils, ambition. There is also the too long-lived memory of injuries, and the burning for revenge, still increasing after a long interval. And then the infinite variety of
117 inclinations and appetites, and every man's obstinacy in exalting his own fancy. Also the fact that man delights in such mad cruelty to his own kind, that the majority of the woes to which man's lot in life is exposed proceed from man himself.

7. Therefore the genuine and principal reason why the patriarchs, abandoning their natural liberty, took to founding states, was that they might fortify themselves against the evils which threaten man from man. For, after God, man can most help man, and has no less power for harm. And they are right in their judgment of the malice of men and its remedy, who have accepted as a proverb the saying, that, if there were no courts, one man would devour another. But after men had been brought through their communities into such order that they could be safe from mutual injuries, the natural result was that they enjoyed more richly those advantages which can come to men from other men; for example, that they were imbued from childhood with more friendly habits, and discovered and cultivated various arts, by which human life was made rich and comfortable.

8. The reason for founding a state will become still clearer, if we consider that other means of restraining the malice of men would not have sufficed. For although the natural law commands men to abstain from inflicting any injury, still respect for that law cannot insure to men the ability to live quite safely in natural liberty. For although there may be men of so quiet a temper that, even with impunity assured, they would not injure others; and also other men who somehow check their desires from the fear of an evil that will result; still there is, on the other hand, a great multitude of those to whom every right is worthless, whenever the hope of gain has enticed them, or confidence in their own strength or shrewdness, by which they hope to be able to repel or elude those whom they have injured. There is no one who does not strive to protect himself

against such persons, if he loves his own safety; and that protection cannot be had more conveniently than by the help of states. For in spite of the fact that some may have given a mutual pledge to help 118
each other, still, unless there be something to unite their judgments, and firmly bind their wills to carry out the pledge, it is vain for one to promise himself unfailing aid from the others.

9. Lastly, although the natural law sufficiently teaches men that those who inflict injury upon others will not go unpunished, nevertheless neither fear of the Divinity nor the sting of conscience is found to have strength to control the malice of all sorts of men. For with many, through defect of training and habit, the force of reason grows deaf as it were. The result is that they aim at things present only, indifferent to the future, and are moved only by what strikes upon the senses. But since divine vengeance commonly walks with slow foot, for that reason wicked men are given an opportunity to attribute the evils which befall the impious to other causes; especially since they often see wicked men in possession of abundance in those things by which the crowd measures felicity. And then the goads of conscience, which precede the crime, seem less strong than those which follow it, when the deed can no longer be undone. But to check evil desires, the prompt remedy, and one well adapted to human nature, is found in states.

CHAPTER VI

On the Internal Structure of States

1. Our next task is to investigate the manner in which states have been erected, and how their internal structure is held together. In this investigation it is first evident that, to meet the dangers which threaten individuals from the perversity of men, it was impossible for some place, or arms, or brutes, to furnish a more convenient and
119 effective protection than could other men. But since their power is not carried to distant objects, it was necessary that those by whom that end was to be attained should join together.

2. And it is not less certain that the agreement of two or three cannot afford that sort of security against other men. For it is easy for so many to conspire to overpower these few, that they can insure for themselves a perfectly certain victory over the others; and the hope of success and impunity will give them confidence for the attack. Therefore, to this end it is necessary for a considerable mass of men to join together, that the addition of a few to the numbers of the enemy may not be of appreciable moment in helping them to victory.

3. Among the many who unite with this end in view, there must be agreement in regard to the employment of means suited to that same end. For even many will accomplish nothing, if they are not agreed among themselves, but are divided in opinion and have different aims. Or, they may for a time agree, under the impulse of some emotion, and yet presently they will go in different directions, with the usual changeableness of man's nature and inclinations. And although they promise by general agreement that they will employ their powers for the common defense, still, even in this way, the multitude is not sufficiently safeguarded for any length of time. But something further must be added, that those who have once consented together for peace and mutual aid in the interest of the common good, may be prevented from disagreeing again later, when their own private good seems to clash with the public.

4. But in human nature two faults in particular are found, which hinder many persons, who are their own masters and independent of each other, from long agreeing for some common end. One is the diversity of inclinations and of judgment, in distinguishing what is most useful for that end; and with this is joined in

many cases dullness in discerning which proposal of several is more advantageous, and also obstinacy, in defending with tooth and nail what has once somehow caught one's fancy. The second fault is indifference and reluctance to do the useful thing of one's own mo- 120
tion, when there is no necessity, to compel the recalcitrant to do their duty willy-nilly. The former fault is counteracted by permanently uniting the wills of all; the latter, if there is constituted some authority, which can inflict upon those who resist the common advantage, some immediate and sensible punishment.

5. The wills of many men can be united in no other way, than if each subjects his will to the will of one man, or one council, so that henceforth, whatever such an one shall will concerning things necessary to the common security, must be accounted the will of all, collectively and singly.

6. Moreover, a power, such as must be feared by all, can likewise be constituted among a multitude of men in no other way than if all, collectively and singly, have bound themselves to employ their powers in the way he shall prescribe, to whom they have all resigned the direction of their powers. But when a union both of wills and powers has been brought about, then at last a multitude of men is quickened into the strongest of bodies, a state.

7. Again, for a state to coalesce regularly, two compacts and one decree are necessary. For first of all, when the many men, who are thought of as established in natural liberty, gather to form a state, they individually enter into a joint agreement, that they are ready to enter into a permanent community, and to manage the business of their safety and security by common counsel and guidance, in a word, that they mutually desire to become fellow-citizens. They must all together and singly agree to this compact; and a man who shall not do so, remains outside the state that is to be.

8. After this compact a decree must be made, stating what form of government is to be introduced. For until they have settled this point, nothing that makes for the common safety can be steadily carried out.

9. After the decree concerning the form of government, an- 121
other compact is needed, when the person, or persons, upon whom the government of the nascent state is conferred are established in authority. By this compact these bind themselves to take care of the common security and safety, the rest to yield them their obedience; and by it also all subject their own wills to the will of that person or persons, and at the same time make over to him, or to them, the use and employment of their powers for the common defense. And only when this compact has been duly executed, does a perfect and regular state come into being.

10. A state thus constituted is conceived as a single person, and distinguished and differentiated from all individual men by a single name; and it has its own peculiar rights and its possessions, which neither individuals, nor many persons, nor in fact all together, can claim for themselves, except him who has the highest authority, that is, to whom the rule of the state has been entrusted. Hence a state is defined as a composite moral person, whose will, intertwined and united by virtue of the compacts of the many, is regarded as the will of all, so that it can use the powers and resources of all for the common peace and security.

11. But the will of a state, as the source of public acts, declares itself either through one man, or one council, according as the chief authority has been conferred upon him or them. Where the government of the state is in the hands of one man, the state is understood to will whatever that man shall please (it is presupposed that he is in his right mind), in regard to matters concerning the end for which states exist.

12. But where the government of a state has been conferred upon a council, consisting of a number of men, each one of whom retains his natural will, the will of the state is regularly understood to be that upon which a majority of the men composing the council have agreed; unless it has been expressly determined what fraction of the council must be in agreement, in order to represent the will of
122 the whole body. But when two rival proposals are evenly matched, nothing will be done, but the case will remain as before. As between several rival proposals, that one will prevail which has more votes than its rivals singly; provided the number voting for it is that which, according to public enactments, can otherwise represent the will of the whole body.

13. The state being thus constituted, the central authority, according as it is one man, or one council of the few, or of all, is called a monarch, a senate, or a free people. The rest are styled subjects, or citizens, understanding the latter term in its wider sense. There are some, however, who, in a narrower sense, usually call only those citizens, who by their union and consent formed the state in the first place, or else their successors, namely, the heads of households. Moreover, citizens are either original or adopted. The former are those who were present in the beginning at the birth of the state, or their descendants. These it is the custom also to call indigenous. The adopted citizens are those who from without join themselves to a state already constituted, with the purpose of planting the seat of their fortunes there. As for those who sojourn in the state, merely to tarry for a time, though subject just so long to its authority,

they are still not regarded as citizens, but are called strangers or immigrants.

14. However, what has been laid down with regard to the origin of states does not prevent us from saying with good reason, that civil authority is from God. For it is His will that the natural law be observed by all men; and in fact, after the race had multiplied, life would have come to be so barbarous, as to leave scarcely any place for the natural law, whereas its observance is greatly promoted by the establishment of states. In view of all this, and since he who orders an end is understood to order also the means necessary to the end, God too, through the medium of reason's mandate, is understood antecedently to have enjoined upon the now numerous human race to establish states, which are animated, so to speak, by their highest authority. Their order also He expressly approves in the Holy Scriptures, and confirms its sacredness by special laws, and testi- 123
fies that all this is peculiarly His care.

CHAPTER VII

On the Functions of the Supreme Authority

1. What are the functions of the supreme authority, and in what ways its force exerts itself in states, can be clearly deduced from the nature and end of the latter.

2. In a state all have submitted their will to the will of the rulers, in regard to the things that make for the safety of the state, as the citizens are willing to do whatever the rulers desire. To make this possible it is necessary for the latter to make known to the former what is their will in such matters. They do this, then, not only by mandates addressed to individuals, concerning particular affairs, but also by general regulations, from which everyone may for all time be certain in regard to things to be done or left undone. By these also is usually defined what ought to be regarded as a man's own, and what another's; what is to be held lawful or unlawful in that state, what honorable or dishonorable; what part of his natural freedom each one retains, or how each should adapt the enjoyment of his rights to the peace of the state; and finally what each has the right to exact of the other, and in what manner. For it is of the utmost importance to the fair name and peace of a state to have all these things clearly defined.

3. Moreover, it is the chief end of states, that by mutual agreement and help men should be safe from the losses and injuries which their fellow-men can, and usually do, inflict. To obtain this from the men with whom we unite to form the same community, it is not enough for them to agree to abstain from injuries, nor for the mere will of a superior to be made known to the citizens. But
124 there is need of the fear of punishment, and of the power to enforce it. And the punishment, if it is to suffice for our purpose, must be so regulated that violation of the law is manifestly a greater hardship than the observance; and thus that the severity of the penalty outweigh the pleasure or profit received, or hoped for, from the injury. For, of two evils, men can only choose the less. There may indeed be many men who are not restrained from doing injury by a threatened penalty, but this is to be counted among the exceptional cases, which human conditions do not allow us altogether to avoid.

4. Furthermore, controversies very often arise in regard to

the right application of the laws to single acts, and, if a violation of law is claimed, many points are encountered which have to be carefully weighed. Consequently, that peace may be maintained among the citizens, it is the duty of the supreme authority to hear and decide the suits of its citizens, to examine the acts of individuals, which are charged with being contrary to law, and to pronounce and execute a sentence in conformity with the laws.

5. But, in order that those who have united to form a state, may be safe against outsiders, it is the duty of the supreme authority to assemble, unite and arm, such a number of citizens, or hire such a number of substitutes, as shall seem needful for the common defense, in view of the uncertain numbers and strength of the enemy; and again to make peace, when that shall be expedient. And the interests both of war and peace are served by treaties, that the advantages of different states may be better shared with each other, and also a stronger enemy may be repelled by united forces, or reduced to order. Hence it belongs also to the supreme authority to enter into treaties that will serve both situations, and to bind all the subjects to the observance of the same; also to turn to the account of the state all advantages flowing therefrom.

6. Again, the affairs of a large state, whether in time of war or of peace, cannot be administered by one man, without ministers and magistrates. Consequently the supreme authority must appoint men in its place to examine the controversies of citizens, to discover the intentions of neighbors, command soldiers, collect and disburse the 125
resources of the state, and finally to look out for the interest of the state everywhere. And the possessor of supreme authority has the power and the obligation of compelling these men to do their duty, and of demanding an account of what they have done.

7. And inasmuch as the affairs of a state cannot be carried on either in war or peace without expense, it is the duty of the supreme authority to compel the citizens to meet the same. And this is done in various ways; for instance, the citizens may set aside for these needs some part of the property or income of the country they occupy; or individual citizens may contribute out of their own possessions, and at the same time give their services when necessary; or customs duties may be imposed upon wares imported or exported (the former, however, being a burden chiefly to the citizens, the latter to foreigners); or a suitable fraction may be taken from the price of commodities which are consumed.

8. Finally, since the actions of men are controlled by their several opinions, and most men are in the habit of judging things in accordance with their habit, or as they see the matter is commonly judged; and since very few can by their own ability distinguish truth

and honor, it is expedient for the state that it resound with such teachings, publicly taught, as are in harmony with the proper end and need of states, and, at the same time, that the citizens' minds be imbued with them from boyhood. Hence it is the duty of the supreme authority to appoint men to give such instruction publicly.

9. These functions of the supreme authority are, moreover, so connected by nature, that, if the form of the state is to remain regular, they must, all together and singly, belong root and branch to one man. For if one or two of them are quite lacking, the government will be defective, and unfitted to accomplish the purpose of the state. But if, on the other hand, they are divided, so that some belong root and branch to one man and the rest to another, an irregular state, lacking in coherence, necessarily results.

CHAPTER VIII

126

On the Forms of Government

1. The supreme authority usually produces different forms of government, according as it is found in the possession of a single man, of a council consisting of a few, or of one including all.

2. And the forms of government are either regular or irregular. The former are found where the supreme authority is so concentrated in a single entity, that, from a single will, it is conveyed to every part and concern of the state, without division and separation. Where this is not found, the form of government will be irregular.

3. Of the regular state there are three forms: first, when the supreme authority is in the hands of one man, and is called monarchy; second, when the supreme authority is in the hands of a council composed of selected citizens only, and is called aristocracy; third, when the supreme authority is in the hands of a council composed of all the heads of households, and is called democracy. In the first the possessor of power is called a monarch, in the second the nobles, in the third the people.

4. In all these forms the power is indeed the same. But monarchy has this conspicuous advantage over the other forms, that there deliberation and decision, that is, the actual exercise of government, do not demand the naming of times and places, but can take place anywhere and at any time, so that the monarch has always the power immediately to perform acts of government. But for a decision of nobles and people, who are not one natural person, they must come together at a fixed place and time, and there deliberate and decide in regard to public affairs. For otherwise the will of senate and people, which results from the unanimous opinions 127
of a majority, cannot be learned.

5. But, as with other rights, so also with the supreme authority, it happens in one place to be well administered, in another ill and unwisely. Hence some states are called healthy, others unhealthy and corrupt. Yet it is unnecessary to invent special forms, or species, of state, in view of such maladies. As for the maladies, however, which afflict states, some are connected with persons, others with the state itself. Hence some are called personal defects, others constitutional.

6. Personal defects in a monarchy are these: if he who occupies

the throne is devoid of the arts of reigning, and unconcerned, or insufficiently concerned, for the state, and prostitutes it to be rent asunder by the ambition or avarice of unworthy ministers; or if he is dreaded for his cruelty and proneness to anger; if, even without necessity, he delights in exposing the state to danger; if by extravagance or unwise largesses he dissipates the resources gathered to meet the expenses of the state; if he unreasonably accumulates money extorted from the citizens; if he is insulting and unjust, or has any other faults by which one gains the name of a bad prince.

7. Personal defects in an aristocracy are these: if by intrigue and base arts a way into the senate is open to wicked or incompetent men, while their betters are excluded; if the nobles are divided by factions; if they try to abuse the commons as if slaves, and to increase their private patrimony by appropriating the possessions of the state.

8. Personal defects in a democracy are these: if incompetent and turbulent men are in the habit of defending their opinions turbulently and rudely; if great talents, not dangerous to the state, are suppressed; if, because of fickleness, laws are made and unmade at random, and things approved are soon without reason disapproved; if low-bred and incompetent men are set over the administration of affairs.

128 9. Personal defects applying to any kind of state are: if those upon whom the administration is incumbent perform their duty negligently or basely; and if citizens, who have no distinction left them but that of obedience, champ the bit.

10. But it is a constitutional defect when the laws or institutions of a state are not adapted to the genius of the people or of the country; or where these dispose the citizens to internal discord, or to incur the righteous indignation of their neighbors; or if they make the citizens incapable of performing the functions necessary to the preservation of the state; for example, if, owing to the laws, they can only lapse into an unwarlike sloth, or be unfitted to endure peace; or if the fundamental laws are so ordered that, because of them, public affairs cannot be transacted except slowly or with difficulty.

11. To such unhealthy states many apply special names also, calling a defective monarchy tyranny, a defective government of the few, oligarchy, a defective popular government, ochlocracy. Yet it frequently happens that many men in using these terms do not express so much a malady of the state, as their own feeling or displeasure with the present régime, or the rulers. For, if a man dislikes a king or a monarchy, he commonly calls even a lawful and good prince tyrant or despot, especially when he enforces the laws

strictly. So too the man who grieves at his exclusion from the senate, while thinking himself in no way inferior to the other senators, contemptuously and enviously calls them oligarchs, that is, a few persons who, though in no way superior to the rest, still exercise authority over their equals or betters, not without arrogance. Finally, haughty men, and those who dislike popular equality, seeing that in a democracy all have equal right to vote on a public question, whereas in every state the common people is the most numerous, call that an ochlocracy, that is, a state where the common herd is in power, and no privilege is left to uncommon men, such as they reckon themselves.

12. An irregular state is one in which that union, in which 129
the essence of the community consists, is not so perfectly found, and that not by reason of a malady or defect inherent in the administration, but under such conditions that that form of government has by public law or custom been established as legitimate. But, since the varieties of aberration from a standard can be infinite, it is also impossible to establish certain definite species of irregular forms of government. The character, however, of such a form can be plainly understood from one or two examples. For instance, if in a republic the senate and people should both have an equal authority to carry on public business, neither being responsible to the other. Or, if in a kingdom the power of the nobles should so increase that henceforth they are subordinate to the king only as inferior colleagues.

13. We speak of systems of states where several perfect states are so connected by some special bond, that their several powers can be regarded as substantially the powers of one state. And systems arise chiefly in two ways; by a common king, or by a treaty.

14. A system arises through a common king, when several separate kingdoms have one and the same king as the result of an agreement, or by virtue of a marriage, an inheritance, or a victory, with the reservation, however, that they do not form one kingdom, but are separately administered by their common king according to the fundamental laws of each kingdom.

15. Another species of system appears when several neighboring states are connected by perpetual treaty in such a way that certain functions of the supreme authority, having especially to do with defense against outsiders, are to be exercised only with the consent of all, while the liberty and independence of the several states in other matters remains intact.

130 CHAPTER IX

The Characteristics of Civil Authority

1. Every authority by which an entire state is ruled, in any form of government, has this quality, that it is supreme, that is, not dependent in its exercise upon any man as a superior, but operating according to its own judgment and discretion, so that its acts cannot be nullified by any man as a superior.

2. It follows then that the same supreme authority is *ἀνυπεύθυνος* [unaccountable], in other words, not bound so to render account to any human being, that, if that person did not approve the account, it would for that reason be liable to human penalties or constraint, proceeding as it were from a superior.

3. Connected with this is the fact that the same supreme authority is superior to human and civil laws as such, and thus not directly bound by them. For those laws are dependent upon the supreme authority in origin as well as in duration. Hence it is impossible for it to be bound by them, since it would otherwise be superior to itself. And yet, when the possessor of supreme authority has by a law enjoined certain obligations upon the citizens, and the matter applies to himself as well, it is proper, and helpful in lending authority to the law, for him to comply willingly with the same himself.

4. Lastly, the supreme authority has a special sanctity, so that not only is it wrong to resist its legitimate commands, but also the citizens must patiently bear with its severity, just as the peevishness of parents is borne by good children. And even when it has threatened the most cruel injuries, individuals will seek their safety in flight, or endure any amount of misfortune, rather than draw the sword against one who is indeed harsh, but still the father of his country.

131 5. Moreover, the supreme authority, especially in monarchies and aristocracies, is in some cases found to be absolute, in others limited. Absolute authority is said to belong to the monarch who can administer it according to his own judgment, not according to the norm of definite and permanent statutes, but as the present exigency seems to demand; and who thus provides for the safety of the state at his own discretion, according as its circumstances require.

6. But one man's judgment is not immune from error, and his will, especially in the midst of such liberty, is easily bent in the worse direction. Hence it has seemed wise to same nations to cir-

cumscribe the exercise of his authority by certain limits. And this was done when, upon conferring the throne, they bound the king to certain laws concerning the administration of the functions of government. And whenever matters came up affecting the general interest, and incapable of being decided in advance, it was their will that these things should not be undertaken, except with the foreknowledge and consent of the people, or after their representatives had been called together in an assembly, that less occasion might be given the king to turn away from the welfare of the kingdom.

7. Finally, in kingdoms we often meet with a distinction in the method of holding the royal power—a method which is not found to be uniform in all cases. For some kings are said to hold their kingdom as a patrimony, so that, at their caprice they can divide it, alienate and transfer it to anyone they please. This is particularly the case with those who have gained a kingdom for themselves by arms, and have acquired a people of their own. But the other kings, who have been chosen by the will of the people, although they have the highest right to exercise authority, are nevertheless unable to divide the kingdom at their pleasure, to alienate or transfer it. On the contrary, they are bound to follow the fundamental law, or established practice of the nation, in handing on the kingdom to their successors; and for this reason some compare them in a way with usufructuaries.

132

CHAPTER X

On the Methods of Acquiring Authority, Especially Monarchical

1. Although consent of the subjects is required for the establishment of any kind of legitimate authority, this is not everywhere obtained in the same way. For sometimes a people is compelled by the violence of war to consent to the authority of the victor; and again the citizens voluntarily give their consent to the appointment of a prince.

2. The violent method of acquiring authority is usually called seizure, that is, when one, sustained by a just cause for the war, and by the favor of strength in arms, and of fortune, so far reduces a nation that they are compelled henceforth to submit to his authority. And the legitimate title to his authority is derived not only from the fact that the victor, had he wished to take advantage of the rigors of war, could have deprived the vanquished of life altogether, and so gains additional credit for clemency, in permitting them to take the lesser evil; but also from the fact that the adversary, in going to war with one whom he had himself previously injured, and to whom he had refused to give fair satisfaction, exposes all his fortunes to the hazard of war, so that already he tacitly agreed in advance to any condition which the issue of the war is to assign to him.

3. But a kingdom is acquired by the voluntary consent of a people through the medium of an election, by which the nation to be established, or already established, voluntarily designates a certain man, as being, in its judgment, capable of authority. And when he has been notified of the decree of the people, and has accepted, and the people have promised their obedience, authority is conferred upon him.

4. Election in an already constituted state, if it follows the
133 death of a former king, is usually preceded by an interregnum. Although in this the state falls back into the imperfect form, when the citizens are bound together merely by their first compact, still the latter gains much strength from the name of the country and the common feeling for it, and the fact that the property of most of the citizens is attached to that place. And these facts constrain the good citizens to keep the peace with one another voluntarily for a time, and to endeavor all the more promptly to restore the full authority. But

it is of great assistance, in avoiding the disadvantages apt to arise from an interregnum, if men are named in advance, in whose hands shall rest the administration of the state during a vacancy of the throne.

5. But in some countries, on the death of each monarch, a new election is held. In others the kingdom is conferred upon another man, with the understanding that it is to pass by succession to others without the intervention of a new election. Such right of succession is established either by the will of the king himself, or by that of the people.

6. Kings who hold their kingdom as a patrimony, can dispose as they please in regard to the succession; and their disposition will be respected, just as is the last will of private individuals, especially in the case of one who founded or acquired the kingdom. In so doing it will be permitted, if one so choose, to divide the kingdom among several children, daughters even being not excluded; or even to name as heir an adopted son, or a natural son, or one who is connected with the king by no tie of blood at all.

7. When, however, a king of this sort has made no special disposition in regard to the succession, it is presumed in the first place, that he did not by any means wish his kingdom to expire with himself, but that, on account of the ordinary human affection, it should devolve in any case upon his children. It is further assumed that he wished the monarchical form to be maintained after his death, as the form he had himself approved by his example; also that the kingdom should remain undivided, since division involves the sundering both of the kingdom and of the royal family; further, that, among those of the same degree, the male should be preferred to the female, the first-born to those born later; and finally that, if children are lacking, the kingdom should devolve upon the nearest 134
blood relation.

8. But in such kingdoms as were in the beginning established by the free will of the people, the order of succession depends originally upon the will of that same people. And if they, in conferring upon the king his authority, have also given him the right to appoint his successor, the man of his choice will succeed him. Where this has not been done, the people are understood to have reserved that right to themselves. And if the people have been pleased to confer a kingdom with hereditary rights upon an elected king, they have either made the order of succession like that of ordinary inheritances, so far as the welfare of the kingdom permits, or have modified it in some particular way.

9. When the people have simply bidden the king to hold the kingdom with hereditary rights, and have added no particulars, it

was indeed their will that the kingdom should devolve after the manner of private inheritances, but not without some modification. For the welfare of states requires that succession to a throne should differ from private inheritances substantially in these respects: (1) the kingdom must be indivisible; (2) the succession should be confined to those who are descended from the first king; (3) only those born in accordance with the laws of the country shall succeed, excluding not only bastards, but also adoptive heirs; (4) in the same degree, males shall be preferred to females, though older; (5) the successor should recognize the fact that the kingdom is a gift of the people, not of his predecessor.

10. But as inextricable controversies could easily arise, as to which of two members of the reigning family was most nearly related to the late king, when they were far removed from the founder of the house, for this reason many nations have introduced the lineal succession. It consists in this, that each draw, as it were, a perpendicular line, following his descent from the founder of the reigning family; and that members of the family be called to the throne, according as their line takes precedence over the others. And there is no passing from one line to another, so long as anyone of the former line survives, in spite of the fact that there may be someone who is very closely related, and in a nearer degree, to the deceased king.

135 11. The commonest forms of lineal succession are the cognate and the agnate. In the former women are not excluded, but postponed to men in the same line, with a return to them, however, if there is a failure of males of a preferred or equal degree. The latter form, on the other hand, forever excludes women and their children, even males.

12. In case a controversy should arise in regard to the succession in a patrimonial kingdom, it will be best to take the matter before arbitrators among the royal family. If the succession has been determined by will of the people, a declaration of the people will remove the uncertainty.

CHAPTER XI

On the Duty of Rulers

1. What precepts make up the duty of rulers, is clearly deduced from the character and end of states, and from a consideration of the functions of the supreme authority.

2. Here it is above all required that rulers themselves diligently learn all that tends to a complete knowledge of that duty; since no one can perform creditably what he has not learned thoroughly. Hence the prince must put aside those pursuits which do not make for this end. He must restrict pleasures, delights and empty employments, in so far as they interfere with that end. Accordingly he must also admit to his intimacy men of sense, skilled in affairs; while flatterers, triflers, and those who have learned only useless accomplishments, must be kept at a distance. But, in order to know how rightly to apply the general precepts of statecraft, he must himself learn as intimately as possible the condition of his state, and the character of the subject people. Furthermore, he must devote himself especially to those virtues whose practice is most 136
conspicuous in so arduous an office, and adapt his habits to the dignity of such eminence.

3. The general law of rulers is this: the welfare of the people is the supreme law.[1] For authority was conferred upon them, with the intention that the end for which states have been established, should thereby be insured. Hence they ought also to believe that nothing is to their private advantage, if it is not also to the advantage of the state.

4. For the internal tranquility of states it is necessary that the wills of the citizens be controlled and guided, as is expedient for the welfare of the state. Hence it is the duty of rulers not only to prescribe laws suited to that end, but also so to confirm the public education, that the citizens shall accept legal prescription not so much from fear of punishment as by habit. It contributes to this end also, to take care that Christian doctrine, in its pure and unmixed form, shall flourish in the state, and that in the public schools such teachings be imparted, as are in conformity with the purpose of states.

5. It is expedient for the same purpose to have plain and clear laws in writing, concerning matters of the most common occurrence

[1] [CICERO, *De legibus*, III, 8.]

among the citizens. There must not, however, be more provisions of the civil laws than conduce to the good of the state and its citizens. For, in regard to what they ought to do, or leave undone, men more usually deliberate in the light of natural reason than by knowledge of the law. Hence, if there are more laws than can be readily retained in memory, and they forbid things which reason does not in itself prohibit, in ignorance and without any evil intent, people must necessarily stumble upon the laws, as upon a snare. Thus an unnecessary inconvenience is caused the citizens by the rulers, which is contrary to the purpose of states.

6. But since it is in vain that laws are passed, if the rulers allow them to be violated with impunity, it is accordingly their duty to have charge of the execution of the same; to see to it that every man gets his rights without tedious delays, evasions and vexations;
137 to inflict penalties according to the gravity of each offense, and the intention and ill-will of the transgressor; and not to bestow pardon without a sufficient reason; since it is unjust and most productive of irritation among the citizens, other things being equal, to treat differently those who have deserved the same treatment.

7. Again, just as nothing must be forbidden under a penalty, if not to the advantage of the state, penalties too must be regulated, so that they are in proportion to that object, and also that the citizens may not suffer more than the state gains. For the rest, if penalties are to accomplish their aim, it is clear that they must be made just so serious, that their severity outweighs the gain and pleasure which can be derived from the act forbidden by the law.

8. Moreover, inasmuch as the purpose with which men united to form a community was to insure security from injuries inflicted by others, it is the duty of rulers to prevent citizens from injuring each other, and this with a severity proportioned to the increased opportunities for injury afforded by their living constantly together. And the differences of class and rank must not go so far that the stronger can at their pleasure insult the weaker. Moreover, it conflicts with the aim of the supreme authority, if citizens avenge by private violence the wrongs they fancy have been done them.

9. Furthermore, although a single prince is not equal to the task of carrying on directly all the business of a large state, so that of necessity ministers must be called to share his cares, nevertheless, just as the latter borrow all their authority from the ruler, so the responsibility for their doings, both good and bad, still remains his in the end. For this reason, and because affairs are conducted well or ill, according to the character of the ministers, rulers are bound to employ in the service of the state honest and capable men, and from time to time to inquire into their acts, and finally to reward or punish them,

according as they are found to have done their part, in order that the rest may understand that public business is to be conducted with no less fidelity and diligence than private. So also, in view of the 138 fact that wicked men are lured to the commission of crime by hope of impunity, which they find easiest of attainment where judges are open to corruption, it is the duty of rulers severely to punish such judges, as promoters of crimes, by which the security of the citizens is destroyed. Moreover, though the ordinary conduct of affairs is to be intrusted to ministers, the rulers will nevertheless never refuse to lend an ear patiently to the complaints and desires of the citizens.

10. Since citizens are not bound to bear tributes and other burdens, except in so far as these are necessary to meet the expenses of the state in peace and war, it will therefore be the duty of the rulers in this connection not to exact more than the necessities, or conspicuous advantage, of the state require, and, so far as possible, to regulate the burdens so that the citizens shall be injured as little as possible by them. Also the burdens must be distributed in due proportion, and no immunities conceded to some citizens, to the loss and oppression of the rest. And the revenue yielded must be spent for the needs of the state, not dissipated in luxury, largesses, superfluous display, or vanities. Finally, care must be taken that appropriations correspond to income, and in case the latter is insufficient, the remedy must be found in economy, the unnecessary expenses being cut down.

11. Rulers are not indeed bound to support their subjects, except that charity commands a special care of those who, because of some undeserved misfortune, are unable to sustain themselves. However, since the funds necessary to the maintenance of the state are to be gathered from the property of the citizens, and the strength of a state consists also in the courage and the riches of its citizens, rulers must, therefore, see to it, so far as in them lies, that the property of the citizens increases. It makes for this end if the citizens are encouraged to get the largest possible return from the land and its waters; to apply their industry to the materials produced in 139 their country, and not to purchase from others the labor they can conveniently perform themselves. And this is brought about, if the mechanic arts are fostered. It is of the greatest importance also to cultivate trade, and, in maritime countries, navigation. And not only must indolence be proscribed, but the citizens must also be recalled to economy by sumptuary laws, forbidding superfluous expenses, especially those which transfer the wealth of the citizens to foreigners. However, the example of the rulers is more effectual in this matter than any laws.

12. Moreover, the soundness and internal strength of states is

brought about by the union of the citizens, and the more carefully the latter is maintained, the greater is the effectiveness with which the power of the authority is distributed through the whole body of the state. Therefore, it is incumbent upon rulers to see to it that factions do not arise in the state; that some citizens are not linked together by special compacts; and that they are not all, or a part of them, on whatever pretext, sacred or profane, more dependent on any other man, whether within or without the state, than upon their lawful prince; and that they do not imagine that more protection for themselves is found in any one than in him.

13. Finally, since the international condition of states is a peace that is quite untrustworthy, it is the duty of rulers to take care that the courage of the citizens and their skill in arms are fostered, and all the things needed to repel an attack made ready in time—fortified places, arms, soldiers, and money, the sinews of action. But, even assuming a just cause for war, no one is to be deliberately attacked, unless a very safe opportunity favors, and the circumstances of the state easily permit. To the same end, the plans and undertakings of neighbors must be carefully ascertained and watched; and friendships and alliances must be contracted with prudence.

CHAPTER XII

On Civil Laws in Particular

1. It remains for us to consider also the functions of the supreme authority in particular and the points that are to be especially observed in regard to them. In this the first place belongs to the civil laws, which are the decrees of the civil ruler, by which it is enjoined upon the citizens what they ought to do in the civil life, and what they should leave undone.

2. Now they are called civil laws chiefly for two reasons, either as regards their authority or their origin. In the former sense, the term civil laws can be applied to all laws according to which justice is administered in the civil court, from whatever source they draw their origin. In the latter sense, we call those laws civil, which proceeded in the first place from the will of the supreme civil authority, and have to do with those matters which have not been defined by the natural and divine law, but make for the particular advantage of individual states.

3. But the civil laws should ordain nothing which is not for the good of the state. And so it is of great importance to the order and tranquility of the civil life, that the natural law should be well observed by the citizens. Hence it is incumbent upon the rulers to give to that law the force and effectiveness of civil law. For in most men we find such depravity, that neither the evident utility of the natural law, nor the fear of the Divinity, is enough to restrain it. Therefore, by bestowing upon natural laws the force of civil laws, the supreme authority has the power to cause the uprightness of the civil life to be somehow maintained.

4. And the force of the civil laws consists in this, that a penal sanction is added to the precepts in regard to doing or leaving undone; in other words, that there is a definition of the penalty which, in the court of the state will await the man who has failed to do what was to be done or has done what should have been left undone. Natural laws, lacking this penal sanction, are violated with impunity in the human court, punishment being reserved, however, by the divine tribunal.

5. Furthermore, because the character of the civil life does not permit that each man exact by his own violence whatever he thinks is due him, for that reason the civil laws at this point too come

to the aid of the natural law, in affording an action for obligations under that law, by virtue of which action the obligations can be enforced in a civil court, with the assistance of a magistrate. Whatever has failed to be thus confirmed by civil laws, cannot be exacted against the will of the other party, but depends solely upon the honor and conscience of the debtors. It is the custom, however, of the civil laws to furnish an action particularly for those obligations which have been contracted between men by express agreements. For the others, resting upon some undefined duty of the natural law, they have generally refused an action, that the better men might have opportunity to practice their virtue, and that they might gain high praise, if they appeared to have done well without compulsion. Often, too, the matter did not seem so important that the judge should be troubled about it.

6. Again, since many precepts of the natural law are indefinite, their application being left to the discretion of every man, the civil law, with a view to the order and tranquility of the state, is accustomed to assign to such actions their time, manner, place, and persons, also to determine other circumstances, and at times to encourage men by rewards to undertake them. Also, if there is any obscurity in the natural law, it belongs to the civil law to explain it. And this explanation the citizens are bound to follow in practice, in spite of the fact that their own private opinion may perhaps take a different direction.

7. Moreover, since by the natural law, many acts have been left to the judgment and discretion of the individual, but in a state peace and public order require that these acts be regulated in a uniform manner, the civil laws for that reason usually prescribe for acts and matters of this kind a certain form, as is the case in last
142 wills, in contracts, and many others. For the same reason also civil laws are in the habit of circumscribing the exercise of those rights which a man has naturally.

8. To the civil laws, in so far as they do not openly conflict with the divine law, the citizens owe obedience, not from mere dread of punishment, but from an intrinsic obligation, confirmed by the natural law itself; for among its precepts is this also, that one must obey lawful rulers.

9. Finally, citizens are bound to obey particular commands of their rulers, no less than the general laws. In this, however, we must notice whether the ruler commands the citizen to do something, as an act belonging to the citizen, or bids him undertake the mere execution of an act, which must belong properly to the ruler. For in the latter case, necessity being imposed by the ruler, a citizen can without sin on his own part do something whereby the ruler

himself commits a sin. But a citizen cannot rightly commit in his own name a sin repugnant to the natural and divine law. Hence it follows that, if a citizen, by command of the ruler, bears arms, even in unjust war, he does not sin. But, if a man, by command of the same ruler, condemns an innocent person, bears false witness, or slanders another, he certainly does sin. For a citizen serves as a soldier in the name of the state, but judges, testifies, and accuses in his own name.

143 CHAPTER XIII

On the Power of Life and Death

1. Power over the lives of the citizens belongs to the supreme civil authority in two ways, indirectly and directly. The former is for the defense of the state, the latter to check crimes.

2. For, since the violence of foreigners must often be repelled by violence, or our rights must be obtained from them by force, the supreme authority certainly may compel its citizens to carry this out, in which case there is no intention that the citizens shall lose their lives, but they are merely exposed to the danger of death. And that in such dangers the citizens may be able to conduct themselves with energy and skill, the supreme authority is bound to train and prepare them. Moreover, no citizen may render himself incapable of military service, from fear of that danger. And the enrolled soldier will by no means desert his assigned post out of fear, but rather will fight to the last breath; unless he knows it to be the will of the ruler, that he preserve his life, rather than the position; or else, in case the place is not worth so much to the state as the lives of those citizens.

3. On the other hand, the supreme authority can take the lives of citizens directly on account of flagrant crimes, and as a punishment, which, however, falls upon the man's other possessions also. And at this point we must make some general explanations of the nature of punishment.

4. Punishment then is an evil that one suffers, inflicted for an evil that one has caused; in other words, a vexatious evil imposed upon a man by authority and forcibly, in view of a previous offense. For although certain acts may often be imposed upon a man as a punishment, the point, however, is that they are laborious and vexa-
144 tious to the doer, and that, while he is acting, a certain suffering is thereby imposed upon him. Moreover, punishment must be inflicted upon unwilling subjects, because otherwise it would not accomplish its purpose, which is to deter men from wrongdoing by its severity. And this effect does not belong to the things that one willingly accepts. Finally the character of a punishment does not attach to evils which come to one in war or battle, while resisting, since they are not ordered by authority; nor to those which a man suffers unjustly, since they do not come to one in view of a previous offense.

5. But although natural liberty has this effect, that one who

is in that state and has no superior but God, is liable to the divine punishments only, with the introduction of authority among men, the safety of communities has assigned to rulers this further power, that they themselves restrain the wickedness of their subjects by executing punishment, so that the larger number may be able to live in mutual security.

6. Again, although there appears to be no injustice in letting the evil-doer suffer evil, nevertheless in human punishments we have not merely to consider what evil has been committed, but also what advantage can be derived from the punishment. Thus also punishments are by no means to be inflicted, with the intent to let the injured party gloat, and take pleasure in the pain and punishment of him who did the injury. For this pleasure is clearly inhuman and contrary to sociability.

7. The real purpose of human punishments is the prevention of wrongs and injuries; and this is achieved, either if the wrong-doer is reformed, or others by his example, so that they do not desire to do wrong in the future, or else if the wrong-doer is so restrained that he cannot henceforth injure anyone. Which can also be stated in these terms: in punishment regard is had to the interest either of the wrong-doer, or of him who would have gained, if the wrong had not been done, and who has thus been injured by the wrong deed; or for the interest of all without distinction.

8. In the first place, then, in inflicting punishment regard is had to the interest of the wrong-doer, when his spirit is reformed by 145
the pain of punishment, and the desire to do wrong quenched by the same means. This kind of punishment is in many states left to heads of households, to exercise over their domestics. But one is evidently not permitted to go so far as a death-penalty, for that one object, since the dead man cannot be reformed.

9. And then there is involved in punishment the interest of the injured party, that for the future he may suffer nothing similar from the same man or others. The former object is attained if the wrong-doer is destroyed, or else, if, without prejudice to his life, the power to injure is taken from him; or if by his punishment he learns not to offend. The latter object may be attained by open and public punishment, with ceremony suited to inspire terror in others.

10. Finally, in punishment the interest of all is sought, when the aim, namely, is to prevent the man who has injured one, from going on to injure others, or that, frightened by his example, the rest may abstain from similar crimes. And this is attained in the same way as above.

11. If, then, we proceed to consider both the ends of punishment and the condition of the human race, it is evident that not all sins

are of such a character that it is at all proper for them to be punished in a human court. Hence we exempt from human punishment acts that are merely inward, that is, the pleasurable thought of some sin, greed, desire, intention without effect, even if they should come to the knowledge of others by a subsequent confession. For, as harm comes to no one from such an inward motion, it is not to the advantage of anyone either, that a man be punished for the same.

12. It would also be excessively harsh to subject to human punishments those very small lapses which, in the present state of human nature, it is not given us to escape, no matter how great the attention one endeavors to bestow upon them.

13. Moreover, many acts are unnoticed by human laws, on account of the peace of the state, or for other reasons; for example, in case a good act will be more conspicuous, if it does not seem to have
146 been undertaken with any regard to a penalty; or where it is not worth while to trouble the judges, or if the question is most difficult to decide, or a really inveterate evil cannot be removed without a convulsion in the state.

14. Finally, it is necessary to exempt also from human punishment the vices of mind, resulting from the common corruption of mankind, and so numerous that there would be no subjects left, if you should wish to punish those faults with severe penalties, so long as they have not broken out in wicked acts; for example, there are ambition, avarice, inhumanity, ingratitude, hypocrisy, envy, arrogance, anger, animosity and the like.

15. However, if some offenses worthy of human punishment have been committed, it is not always necessary for a punishment to be exacted. It sometimes happens, in fact, that pardon for their offense can properly be given to the culprits. This, however, should not be done without serious reasons. Among such are these: if the ends of punishment in a certain case do not seem necessary, or if pardon is likely to produce a greater advantage than is punishment, or if the ends of punishment can be better attained in some other way. Also, in case the guilty party alleges, as worthy of special reward, his own great services to the state, or those of his relatives; or if he is recommended by some other distinction, as, for instance, by a rare art; or if it is hoped that the offense will be wiped out by noble deeds; especially where ignorance in some form, though not altogether without blame, has been involved, or if the particular reason for the law has ceased to apply to the act in question. Often, too, pardon must be granted on account of the number of the guilty, that the state may not be depopulated by punishments.

16. But the seriousness of offenses is estimated from the object upon which it was committed, according as that is accounted noble

and valuable; also from the effect, according as a great loss or a small one results for the state; and finally from the wickedness of the intent, which is gathered from various indications; for example, if the man could easily have resisted the reasons by which he was impelled to sin; or if, in addition to the general, there was also some particular, reason which should have deterred him from wrong- 147
doing; or where peculiar circumstances aggravate the deed; or if a man has a disposition capable of resisting the wiles of wicked men. Moreover, we usually consider whether a man was the first to do wrong, or seduced by the example of others, whether once, or oftener, and after advice has been spent in vain.

17. The kind of punishment, however, and the precise amount to be inflicted for each offense, it rests with the supreme civil authority to define. And it should in this matter have only the advantage of the state before its eyes. Hence it is possible and a frequent occurrence for the same penalty to be imposed for two unequal offenses. For the equality which judges are instructed to observe with regard to defendants, is understood to concern defendants who have committed the same kind of offense, in so far as an offense punished in the one case ought not, without the weightiest reason, to be condoned in the other. But although man ought, so far as possible, to be more merciful toward man, sometimes, however, the welfare of the state and security of the citizens require that penalties be aggravated; for example, if there is need of a more heroic remedy against increasing vices; or when an offense is most destructive to the state. But in general, with regard to the scale of penalties, care must be taken that they be sufficient to repress that desire by which men are carried into the crime for which the penalties are established. Also severer penalties must not be exacted than have been defined by law, unless very extreme circumstances aggravate the deed.

18. But the same penalty does not affect all equally, and thus does not produce the same effect upon all in repressing the desire to do wrong. Therefore, both in the general assignment of penalties, and in the application of them to individuals, regard must be had to the person of the delinquent himself, and those qualities of his which may increase or diminish his sense of punishment; for example, age, sex, rank, wealth, strength, and the like.

19. Again, just as no one can have a penalty properly so-called visited upon him in a human court for another man's offense, so, in case wrong has been done by some society, he who did not consent 148
thereto will not be bound thereby. And hence from such dissenter nothing can be taken away which he did not acquire on account and by virtue of the society. Yet in general when a society is punished, even the innocent usually suffer loss. Moreover, the offenses of societies ex-

pire, when no one survives any longer of those by whose consent and cooperation the misdeed was committed.

20. It happens frequently, however, that the crime of one man furnishes an occasion whereby a disadvantage comes to others, or a benefit previously hoped for is intercepted. Thus, in case the property of parents is confiscated on account of a crime, even innocent children are reduced to poverty. And when the defendant flees, his security is compelled to pay the fine, not because of guilt, but because he voluntarily pledged himself in such a contingency.

CHAPTER XIV

On Reputation

1. Reputation in general is the value of persons in the common life, according to which value they are capable of being placed on an equality with other persons, or compared with them, and either preferred or postponed to them.

2. It is divided into the simple and the intensive. Both are considered with reference to those who live in natural liberty, or to those who live together in the civil state.

3. Simple reputation, as between those who live in natural liberty, consists principally in this, that a man show himself, and be regarded as one with whom men can deal as with a good man, and as one who is ready to live with others according to the precept of the natural law.

4. And this reputation is maintained intact, so long as a man has not yet violated the natural law as regards others by some wicked or flagrant deed, knowingly and purposely, with malice aforethought. Hence also, one is naturally accounted a good man until the contrary is proved.

5. Reputation of this kind is diminished by flagrant deeds maliciously perpetrated against the natural law,—deeds which cause the need of greater circumspection, if one is to deal with such a person. This stain, however, can be wiped out, by making a voluntary reparation of the damage caused, and by giving proof of serious repentance.

6. It is likewise utterly destroyed by a manner and mode of life aimed directly at the promiscuous hurting of others, and at making profit out of the evident injury of others. So long as men of this type are unwilling to come to their senses, they can be treated as common enemies by all whom their malice can in any way touch. Yet these men can recover their reputation, when they have refunded the damages, or obtained pardon, and giving up a vicious mode of life, have entered upon one that is honorable.

7. Simple reputation, in the case of those who live in states, means that a man has not been declared a vicious member of the state, in accordance with its laws and customs, and that he is considered of some account.

8. It is lost in a state, either because of one's condition alone, or on account of crime. The former kind of loss takes place in two

ways: when that condition naturally involves no shame, or else when it is connected with vice, or at least that assumption. The first of these occurs in some states, where slaves are of no account; the second obtains with regard to panders, harlots, and the like, who indeed enjoy the common defense, so long as they are officially tolerated in the state, but are to be excluded from the company of honorable men. This also happens to some who are occupied with things loathsome or vile, though not naturally vicious.

9. By crime, on the other hand, reputation is clearly lost, when according to the civil laws, and for a certain crime, a man is branded with infamy, and this whether he is further punished with death, and
150 his memory thus branded, or he is expelled from the state, or retained in the state, as an infamous and rotten member.

10. It is plain, moreover, that simple reputation, or natural honor, cannot be taken away from a man by the mere will of the rulers. For this in no way makes for the advantage of the state, and so can by no means be understood as a power bestowed upon the rulers. Thus also a man who executes the orders of the state, in the capacity of a mere minister, cannot, it seems, contract real infamy.

11. Intensive reputation is that by virtue of which persons, otherwise equal as regards the simple reputation, are preferred to one another, according as one, more than another, possesses those qualities by which others are prompted to render honor. And honor is, properly, the expression of our judgment of another's superiority.

12. This intensive reputation can be considered with reference to those who live in natural liberty, or to the citizens of the same state. We must next weigh its bases, and in fact according as these produce a mere fitness to expect honor from others, or a right strictly so-called, by which the honor can be claimed from others as one's due.

13. The bases of intensive reputation in general are all those things which involve conspicuous perfection and superiority, or are thought to prove the same, the effect of this superiority being in harmony with the purpose of the natural law, or of states. Examples are perspicacity of mind, and the ability to learn various sciences and arts, a keen judgment in administering affairs, a mind strong and unshaken from without, superior to temptations and alarms, eloquence, beauty and dexterity of body, the blessings of fortune, and above all remarkable achievements.

14. All of these, however, produce merely an imperfect right, that is, a fitness to receive honor and respect from others. Hence, if a man refuses it to others, in spite even of their high merits, he does no injury, but is merely in bad repute for his churlishness

and rudeness. But a perfect right to receive honor from another, or 151
the outward signs of it, is derived either from the authority which one has over the other, or from an agreement entered into with him on this point, or from a law made or approved by their common master.

15. But as for princes and whole nations, they usually defend their preeminence and precedence, by alleging chiefly the antiquity of the kingdom and the family, the size and wealth of their subject territory, and their power, also the nature of the power by which the king possesses the authority in his kingdom, and the splendor of his title. All of these, however, do not in themselves produce a perfect right to precedence over other kings and nations, unless this has been acquired by agreement or concession on their part.

16. Among citizens, on the other hand, it is the duty of the ruler to designate grades of dignity. In this, however, he rightly regards each man's superiority and fitness to serve the state. And whatever rank he has assigned to a citizen, the latter has a right to defend against his fellow-citizens, and he is no less bound to rest content with it himself.

CHAPTER XV

On the Power of the Supreme Authority over Property in the State

1. Where citizens have had their property bestowed upon them by the rulers, it is for the latter to decide what rights the former have over the property. In the same way, such property as citizens have acquired completely by their own industry, or in some other way, is subject to three principal rights, resulting from the nature of states, necessary for their purpose, and belonging to the rulers.

2. The first right consists in this, that the rulers can prescribe laws for the citizens, with regard to the use of their property, in conformity with the interest of the state, or concerning the amount and quality of their possessions, as also the method of transfer to others, and other matters of the kind.

3. The second right consists in this, that the ruler can take away a small part of their property, under the name of tribute or taxes. For, since the life and fortunes of the citizens must be defended by the state, the citizens must contribute the means from which the expenses necessary to that end may be met. Hence he is very shameless who wishes to enjoy the protection and advantage of the state, and yet to contribute no services or property to its maintenance. And yet in this matter wise rulers with good reason adapt themselves to the querulous nature of the crowd, and endeavor to bring about the collection of taxes as imperceptibly as possible, especially by observing equality, and by exacting moderate and assorted taxes, rather than large and uniform ones.

4. The third right is that of eminent domain, consisting in this, that, when urgent necessity of the state demands, any subject's property which the immediate situation especially requires, can be seized and applied to public purposes, even if the property far exceeds the proportion which he was bound to contribute to the expenses of the state. But for this reason the excess ought to be refunded to that citizen from the public treasury, or by contribution of the other citizens, so far as possible.

153

5. Besides these three rights, there are in many states special public properties, which are called the patrimony of the state or kingdom. And in some places this is divided into patrimony of the prince and that of the state, or the royal [*fiscus*] and the state treasury

[*aerarium*]. The former of these is designed to support the king and his household, the latter for the public needs of the kingdom. Of the first the king has the usufruct, and can at his own discretion dispose of the income derived from it. For the second he performs the part of an administrator, and is obliged to apply it to the uses for which it was designed. He cannot alienate either, except with the consent of the people.

6. Much less, however, can he who does not have a kingdom as his patrimony, alienate the whole kingdom, or a part of it, unless the consent of the people is given, and in the latter case the separate consent of the part to be alienated. So also when the situation is reversed, a member cannot break itself off from the state against the will of the latter, unless by the might of a foreign foe it is reduced to such a condition that it cannot be saved in any other way.

154 CHAPTER XVI

On War and Peace

1. It accords most closely with the natural law, if men are at peace with one another, voluntarily performing their obligations; in fact peace itself is a state peculiar to man, as distinguished from the brutes. Yet at times, even for man himself, war is permitted, and sometimes necessary; when, namely, owing to another's malice, we are unable to preserve our possessions, or gain our rights, without employing force. Even in this case. however, prudence and humanity persuade us not to resort to arms, if more harm than good will result for us and ours from the avenging of our wrongs.

2. The just causes for which war can be undertaken reduce themselves to these: that we may preserve and protect ourselves and our belongings against the unjust invasion of others; or that we may assert our claim to what is owed us by others who refuse to pay; or to obtain reparations for an injury already inflicted, or a guarantee for the future. A war waged for the first cause is called defensive, if for the other causes, offensive.

3. And yet when one thinks he has been injured, there must be no instant recourse to arms, especially when there is still some doubt about the right or the fact. But we must try to see whether the matter can be settled in a friendly way, for example, by arranging a conference of the parties, by appealing to arbitrators, or intrusting the case to the decision of the lot. These methods are especially to be tried by the nation making the demand; since an advantage certainly attends possession with some sort of title.

155 4. Moreover, the unjust causes of war are either openly such, or they admit some color [of a pretext], however pale. The former are referred chiefly to two heads, avarice and ambition, the passion, that is, for possession, or for rule. The latter are various, as, for example, fear prompted by the wealth and power of a neighbor, an advantage not based upon right, the desire to gain better lands, the refusal of what we have earned by some good quality as such, the stupidity of the possessor, the desire of extinguishing a right lawfully acquired by the other party, if it seems rather irksome to us, and so forth.

5. Again, the most appropriate mode of action in war is force and terror; but it is nevertheless permitted to use trickery and

ruses against an enemy, provided there is no breach of faith. Hence it is permissible to deceive an enemy by a pretended speech, or fictitious reports, but not at all by promises or agreements.

6. As for the force employed in war against the enemy and his property, we should distinguish between what an enemy can suffer without injustice, and what we cannot bring to bear against him, without violating humanity. For he who has declared himself our enemy, inasmuch as this involves the express threat to bring the worst of evils upon us, by that very act, so far as in him lies, gives us a free hand against himself, without restriction. Humanity, however, commands that, so far as the clash of arms permits, we do not inflict more mischief upon the enemy than defense, or the vindication of our right, and security for the future, require.

7. War is classified as formal and informal. For the first it is required that it be waged on both sides by authority of him who has the supreme power, and that a declaration shall have preceded. A war not declared, or waged against private citizens, is informal. To this class belong also civil wars.

8. The right of making war in a state belongs to him who has the supreme authority. Hence, to engage in war without permission given by the ruler, exceeds the authority of a magistrate, even in case he infers that the supreme power, if consulted, would decide to wage 156
war here and now. But all who are placed with military forces in charge of some province or fortified place are understood, from the purpose of their office, to be also instructed to repel by any means an attacking enemy from the places intrusted to them. They may not, however, rashly transfer the war to hostile territory.

9. But whereas one living in natural liberty can be attacked in war only for injuries which he has himself inflicted, in a state the ruler is often attacked by war, or the whole state is attacked, even though he was not responsible for the injury. But if this is to be rightly done, the injury must have been in some way transferred to him. And rulers of states share in the injuries done by their former citizens, or by those who have recently taken refuge among them, if the rulers have suffered the acts, or afford shelter. Suffering an act becomes culpable, only in case one knows the wrong is being done, and has the power to prevent. But the ruler of a state is assumed to know what is openly and frequently done by the citizens. Ability to prevent is always presumed, unless the lack of it is plainly proved. But the right to make war upon a ruler who receives and protects a guilty person fleeing to him, merely to escape punishment, results rather from a particular agreement between neighbors and allies, than from some common obligation, except in case the fugitive while

he is among us plans acts of hostility against the state which he has abandoned.

10. There is also an established custom among nations that in payment for a debt incurred by the state, or in which the state has involved itself by maladministration of justice, the property of individual citizens is held, to this extent, that foreigners to whom the debt is owed, can lay hands upon such property, if found among them. However, a restitution to the citizens who have had their property taken away in this manner, should be arranged by those who contracted the debt. Such executions are usually called reprisals, and they are frequently the prelude to wars.

157 11. War can be waged not only by anyone for himself, but also on behalf of another. But for this to be rightly done, requires a just cause on the part of him for whom the war is waged, and on the part of his helper a satisfactory reason, in view of which, and for the other's defense, he can carry on hostilities against a third. But among those for whom we not only can, but also must, take up arms, there are in the first place our subjects, not only collectively, but also singly; provided it is clear that the state will not be involved in greater evils in consequence. Next come allies, if this was included in the treaty with them. These, however, yield precedence to our citizens, when they have need of help at the same time. And, furthermore, a just cause of war is presupposed in their case, and a certain prudence in undertaking the war. Then come friends, even though no express promise has been made to them. Finally, when there is no other reason, common descent alone may be a sufficient ground for our going to the defense of one who is unjustly oppressed, and implores our aid, if we can conveniently do so.

12. License in war goes so far that, although in killing, devastating and plundering a man may have overstepped the limits of humanity, still in the general opinion of nations he is not regarded as infamous, and a man whom good men should avoid. Nevertheless the more civilized nations despise certain methods of injuring an enemy; for example, using poison, or bribing the citizens and soldiers of another state to slay their rulers.

13. Movable property is understood to have been captured in war only after it is safe from the enemy's pursuit; immovable property, when we hold it under such circumstances that we have the power to keep the enemy at a distance. And yet, in order to extinguish completely the former owner's right to recover such property, it is necessary for him to renounce all claim by a subsequent agreement. For otherwise, what was acquired by force, may be taken away again by force. But just as soldiers fight under authority of the state, so what they take from the enemy, is properly acquired for

the state, not for the soldiers. Yet it is everywhere customary to 158
leave movable property, especially of small value, to the soldiers who have taken it; and this is connived at, or it takes the place of a reward, or sometimes of pay; or it is to tempt such as may be willing to sell their blood when there is no compulsion. But when captured property is again wrested from the enemy, the immovable things return to their former owners, and the movable should do likewise. But among most nations these too are given up to the soldiers as booty.

14. Finally, authority also is acquired in war, as well over individuals as over whole peoples that have been conquered. But to make this legitimate, and binding upon the consciences of the subjects, the vanquished must have given their word to the victors, and the latter must have laid aside their hostile attitude and temper towards the former.

15. Warlike acts are suspended by truces, that is, a convention by which, for a time, although the state of war and the quarrel out of which the war arose still remain, they must abstain from warlike acts of offense; and when the truce has expired, unless peace has meanwhile been restored, they return to hostilities without a fresh declaration.

16. Truces can, moreover, be divided into two kinds: one when the armies come to a halt on their expedition, and warlike preparations are continued by both sides,—a truce which is generally made for a short time only; the other, under which warlike preparations are terminated on both sides. These can be entered into for a considerable length of time, and usually are; they also have the appearance of a complete peace, and sometimes are called by that name, with the addition of a definite time. For otherwise, as a rule, every peace is perpetual, that is, it permanently extinguishes the controversies on account of which the war was begun. But the so-called tacit truces involve no obligation; in that case the parties both remain quiet at their discretion, and can proceed again to warlike acts, whenever they please.

17. But war ceases entirely when peace has been ratified by 159
the rulers of both sides. Although it rests with the parties to the negotiations to define the terms and conditions of peace, they must be faithfully executed at the time agreed upon, and must be observed. In confirmation thereof, besides the customary oath, and giving of hostages, others, especially those present at the negotiations, often guarantee the observance of the peace, promising their aid, if one party is injured by the other in defiance of the terms of peace.

CHAPTER XVII

On Alliances

1. Times of war and times of peace are equally served by alliances, or agreements entered into by the rulers on both sides. As regards their subject matter, they may be divided into those which are made with a view to the mutual performance of some duty already enjoined by the natural law; and those which add something over and above the natural law, or at least give a certain precision
160 to those duties, in case they seem indefinite.

2. To the former class belong alliances in which the agreement concerns the mere exercise of simple humanity, or abstention from injury. Here too belong those by which a mere friendship is confirmed, without the performance of anything in particular; or those by which the right of hospitality or trade is sanctioned, in so far as it is already required by the natural law.

3. In the latter class, alliances are either equal or unequal. The former of these are such as are the same for both parties, that is, when the promises of both sides are not only equal, absolutely, or in due proportion to their resources, but also on a basis of equality, so that neither party is in an inferior position as compared with the other, or subject to the other.

4. Alliances are unequal when the respective performances are unequal, or else when one party is in an inferior position. And unequal performances are promised, either by the ally of higher rank, or by the lower. The former happens when the more powerful promises assistance to the other, without any stipulation in return, or promises on a larger scale than the other. The second case occurs, if the inferior ally is bound to perform more than he receives from the other.

5. Of the requirements exacted of an inferior ally, some involve a diminution of his sovereignty; for example, if it has been agreed that the inferior ally is not to exercise a certain function of his sovereignty, except with the consent of the superior. Some requirements, however, do not diminish sovereignty, although they bring with them some temporary burden, that is, one which can be disposed of once and for all; for instance, in case one party is bound by a treaty of peace to pay the soldiers of the other, to make good the expenses of war, to pay a certain sum of money, to raze walls,

give hostages, surrender ships and arms, and so forth. Even permanent burdens do not in all cases diminish sovereignty. Examples are: the requirement that one side have the same friends and enemies as the other, while the obligation is not reciprocal; or the prohibition to build walls at certain places, or to take certain voyages, and so on. Also, if one of the allies is bound to show polite deference to the majesty of the other, or to pay him a certain amount of reverence, and to acquiesce modestly in his decision.

6. Again, both equal and unequal alliances are commonly contracted for various reasons. Of the latter those which aim at some permanent combination of several states produce the closest form of 161
alliance. But most frequent are those which concern help to be furnished in defensive or offensive warfare, or the regulation of commerce.

7. There is also a well-known division of alliances into the real and the personal. The latter are entered into with a king in reference to his own person, and expire with his death. The former are contracted not so much with reference to the king or rulers of the people as such, as in the interest of that state or kingdom; and they endure even when their authors are dead.

8. Connected with alliances are overtures, the proper term for agreements entered into by a minister of the supreme power in regard to matters of its concern, but without its instructions. The ruler is not indeed bound by these, except after he has ratified them; but if the minister has absolutely contracted, and ratification has not followed, he must see how he can satisfy those who, relying upon his word, have been deceived by agreements that are null and void.

CHAPTER XVIII

On the Duties of Citizens

1. The duty of citizens is either general or particular. The former arises from the common obligation, by virtue of which they are subject to the civil authority. The latter arises from a particular office and function, which has been laid upon individuals by the supreme authority.

2. The general duty of citizens has regard to the rulers of the state, or to the entire state, or to their fellow-citizens.

162 3. To the rulers of the state a citizen owes respect, loyalty and obedience. This implies that one acquiesce in the present régime, and have no thoughts of revolution; that one refrain from attaching himself to any other, or admiring and respecting him; that one have a good and honorable opinion of the rulers and their acts, and express himself accordingly.

4. A good citizen's duty towards the whole state is to have nothing dearer than its welfare and safety, to offer his life, property, and fortunes freely for its preservation; to exert all the strength of his mind and industry to add to its fame and promote its interests.

5. As regards his fellow-citizens, it is the duty of the citizen to live friendly and peaceably with them, to show himself obliging and good-natured, and not to make trouble by peevishness or obstinacy; not to envy the advantages of the others, or to deprive them of the same.

6. Particular duties either permeate the whole state, or they concern themselves with a part merely. In regard to all of these there is this general precept: a man should not seek or undertake any duty in the state, for which he knows that he is unfit.

7. Those who by their counsel assist the rulers of states, should turn the eye of their mind to every part of it; whatever shall seem to the interest of the state, they must declare with skill and fidelity, without bias or unworthy motives; in all their counsels they must have the welfare of the state as their aim, not their own wealth of power: they are not to humor the evil inclinations of princes by flattery; but to abstain from factions and unlawful gatherings; not to conceal anything that ought to be said, not to reveal anything that should be kept in confidence; to show themselves inaccessible to corruption by foreigners; not to postpone public business for private business or pleasures.

8. Those who are publicly appointed to perform the rites of religion must do so with dignity and attention, set forth true dogmas concerning the worship of God, show themselves to the people a con- 163
spicuous example of their own teaching, and not rob their office of dignity, their teaching of weight, by moral depravity.

9. Those who are publicly commanded to instil knowledge of various kinds into the minds of the citizens, must teach nothing false or pernicious; but so impart the truth that their hearers may assent, not from the mere habit of the lecture-room, so much as because they have perceived the substantial reasons therefor. They must avoid all teachings tending to disturb civil society, and hold all human knowledge vain, if no advantage flows from it for the life of man and citizen.

10. Those in charge of the administration of justice must give easy access to all, and protect the common people from oppression on the part of the more powerful. They must render the same justice to the poor and lowly, as to the powerful and influential; and not drag suits out beyond what is necessary. They should abstain from corruption, use diligence in the hearing of cases, set aside every passion that corrupts honest judgment; and in doing right they should fear no one.

11. Those intrusted with the command of the army are to train the soldiers with diligence and in due time, and strengthen them to endure the hardships of the service; they must keep military discipline intact; they are not rashly to expose the soldiers to slaughter by the enemy, but to provide grain and pay as promptly as they can, and not make away with any of it. They must see that the soldiers are always loyal to the state, and must never gain their favor against the state.

12. Soldiers on their part are to be content with their pay,[1] to abstain from plundering and annoying the peasants, to undergo hardships for the defense of the state willingly and actively, not to invite dangers recklessly, nor avoid them through cowardice, to show bravery against the enemy, not against their comrades, to defend manfully the post assigned, to prefer an honorable death to a shameful flight and life.

13. Those whose services the state employs in foreign countries, should be careful and circumspect, skilled in distinguishing the unreal from the real, the true from the fictitious, very tenacious of secrets, persistent in the interest of their state as against corruption in any form.

14. Those who have charge of gathering or disbursing the 164
resources of the state must avoid all needless harshness, and not add

[1] [Cf. *St. Luke*, iii, 14.]

any burden for their own profit, or out of petulance or ill-will. They are not to retain any public moneys, and must satisfy without unnecessary delay the creditors of the state.

15. The duration of the citizens' particular duty is, so long as they fill the office from which the duty springs; and when they leave the same, the latter too expires. In the same way the general duty lasts as long as they are citizens. But they cease to be citizens, if they leave with the express or tacit consent of the state, and fix the abiding-place of their fortunes elsewhere; or if for some crime they are exiled and deprived of the right of citizenship; or if they have been overpowered by the enemy, and compelled to submit to the rule of the victor.

The End

Glory to God Alone

INDEX

[Figures refer to pages of original in outer margin of translation.]

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